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WHO: The Office of the Federal Register.

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WHERE: Federal Building,
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Conference Room 8544
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WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building,
880 Front St.
Conference Room 45–13
San Diego, CA
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-91-230FR]

Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 932 for the 1991 fiscal year (January through December) established for that order. The action is needed for the California Olive Committee (committee) to incur operating expenses during the 1991 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1991, through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530–S, Washington, DC 20090–6456, telephone (202) 475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 932 (7 CFR part 932) regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately six handlers of California olives regulated under this marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable olives received by regulated handlers during the applicable crop year (August 1 of each year to July 31 of the following year). An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers and handlers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected olive receipts (in tons). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on December 4, 1990, and unanimously recommended 1991 fiscal year expenditures of $2,115,975 and as assessment rate of $20.23 per ton of assessable olives received by handlers under M.O. 932. In comparison, 1990 fiscal year budgeted expenditures were $2,073,440 and the assessment rate was $20.68 per ton.

Major expenditure items budgeted for the 1991 fiscal year compared with those budgeted in 1990 (in parentheses) are $354,975 ($337,540) for program administration, $126,000 ($94,500) for production research, $830,000 ($790,000) for consumer advertising, $632,000 ($667,000) for food service advertising, and $173,000 ($170,250) for public relations. The $42,535 increase in budgeted expenditures from 1990 is mainly attributed to increases in production research and increased administrative costs.

Estimated assessment income of $2,116,058 for the 1991 fiscal period based on handler receipts of 104,600 tons of assessable olives during the 1990–91 crop year will be utilized to cover the committee's expenses. Last year's assessment income was approximately $2,068,000 based on receipts of 100,000 assessable tons. The committee's reserve is well within the maximum amount authorized under the order.

Notice of this action was published in the **Federal Register** on January 2, 1991 (56 FR 31). The comment period ended on January 14, 1991. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all the relevant matter presented, including the information and recommendations submitted by the committee, it is found and determined that this final rule will

tend to effectuate the declared policy of the Act.

The budget and assessment rate approvals for the olive program should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991 fiscal year began on January 1. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 932.225, is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 932.225 Expenses and assessment rate.

Expenses of $2,115,975 by the California Olive Committee are authorized, and an assessment rate of $20.23 per ton of assessable olives is established, for the fiscal year ending on December 31, 1991. Unexpended funds from the 1990 fiscal year may be carried over as a reserve.

Dated: January 31, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–2692 Filed 2–4–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 998

[Docket No. FV–91–231FR]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Increase in Expenses and Assessment Rate for the Peanut Administrative Committee for the 1990–91 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenditures for administration and establishes an increased assessment rate under Marketing Agreement 146 for the 1990–91 crop year. The increases are needed for the Peanut Administrative Committee (committee) to cover higher than anticipated operating expenses and to collect additional funds to pay those expenses during the 1990–91 crop year. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1990, through June 30, 1991 (§ 998.403 (a) and (c)).

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is implemented under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 68 handlers of peanuts covered under the peanut marketing agreement, and approximately 46,950 peanut producers in the 16 states covered under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and a majority of the peanut producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of peanuts. They are familiar with the committee's needs and with the costs for goods, services and personnel for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It automatically applies to all assessable peanuts received by handlers from July 1, 1990. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

A final rule establishing administrative expenses in the amount of $910,000 for the committee for the crop year ending June 30, 1991, was published in the **Federal Register** on June 4, 1990 (55 FR 22777). That action also fixed an assessment rate of $0.52 per ton of assessable peanuts received by handler under Marketing Agreement No. 146 during the 1990–91 crop year.

At its December 10, 1990, meeting, the committee voted unanimously to increase its budget of expenses by $365,000 from $910,000 to $1,275,000. The increase is needed to cover higher than anticipated administrative expenses resulting from the large number of indemnification claims on 1990 crop peanuts. Budget items increased are office supplies and stationery by $16,000 to $30,000, postage and mailing by $21,000 to $30,000, telephone and telegraph by $3,000 to $16,000 and reserve for contingencies by $5,000 to $11,000. The $365,000 increase in authorized expenditures also includes $320,000 for continuing operations during the first few months of the next fiscal period.

Because of poor weather conditions during the growing season, 1990 crop receipts were lower than anticipated. As a result of the short crop, assessment income at the $0.52 per ton rate will not be sufficient to cover expected administrative expenditures. Therefore, the committee unanimously recommended that the assessment rate

be increased by $0.33 to $0.85 per ton of assessable 1990 crop peanuts. Application of the new assessment rate to the committee's revised estimate of 1.5 million tons of assessable peanuts received by handlers will yield $1,275,000 to cover 1990 administrative expenses. The increased assessment rate will also supply ample funds to allow the committee to continue program operations until it begins to receive assessments on 1991 crop peanuts.

Notice of this action was published in the January 9, 1991, issue of the Federal Register (56 FR 804). The period for the receipt of written comments ended on January 22, 1991. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, the recommendation submitted by the Committee, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

The budget increase approval and the establishment of the higher assessment rate should be expedited. The committee needs to have sufficient funds to pay the additional administrative expenses as soon as possible. Therefore, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 should be amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.403 is amended by revising paragraph (a) and paragraph (c) to read as follows:

Note: These changes will not appear in the annual Code of Federal Regulations.

§ 998.403 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1990, shall be in the amount of $1,275,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

* * * * *

(c) *Rate of assessment.* Each handler shall pay to the committee, in accordance with § 998.48 of the marketing agreement, an assessment rate at the rate of $0.85 per net ton of farmers' stock peanuts received or acquired other than from those described in § 998.31 (c) and (d). All funds generated from this assessment shall be for administrative expenses.

* * * * *

Dated: January 31, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–2693 Filed 2–4–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1430

Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a statutorily-required reduction in the price received by producers for milk produced within the 50 States of the United States of America, the District of Columbia, Puerto Rico, and the territories of the United States of America for all milk marketed by producers for commercial use during the period beginning on January 1, 1991, and ending on December 31, 1995. The reduction is provided for in section 204(h) of the Agricultural Act of 1949 (as amended) (1949 Act). For 1991 marketings, the reduction will be 5 cents per hundredweight of milk. For 1992–95 marketings, the reduction will be 11.25 cents per hundredweight plus the amount needed to compensate for refunds to producers of the previous year's reduction. Refunds are permitted in those instances where, as determined under this rule, a person whose proceeds were reduced and related persons individually did not, in the year of the reduction, increase their marketings of milk for commercial use when compared with the previous year. Collection and remittance requirements, together with refund procedures and other requirements, are set forth in this rule. Collection and remittance requirements are generally the same as for the similar price reduction program that applied to January 1990 marketings of milk.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph Chervenic, Financial Management Division, Agricultural Stabilization and Conservation Service United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. (202) 447–3679.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1 and has been classified "major". It has been determined that the provisions of this rule will result in an annual effect on the national economy of $100 million or more. A final regulatory impact analysis of this regulation is available upon request.

Section 101(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACTA) provides that 5 U.S.C. 553 shall not apply to the implementation of milk proceeds reductions under section 204 of the Agricultural Act of 1949 ("the 1949 Act"). Also, because the proceeds reductions implemented in this rule apply as of January 1, 1991, delay in implementing this rule would be contrary to the public interest.

It has been determined by an environmental evaluation that this rule will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this rule applies is: Commodity Loans and Purchases—10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local

officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The collection of information requirement contained in this rule have been submitted to the Office of Management and Budget (OMB) for *EMERGENCY* review under the Paperwork Reduction Act of 1980. Public reporting burden for the collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250, and to the Office of Management and Budget, Paperwork Reduction Project (OMB number 0560–0126), Attn: Stuart Kasdin, Desk Officer for the Agricultural Stabilization and Conservation Service, Room 3208, NEOB, Washington, DC 20503.

Information collection requirements related to refunds will be submitted for OMB approval at a later date.

Section 204 of the 1949 Act was added by FACTA. Subsection (h) of that section was added by the Omnibus Budget Reconciliation Act of 1990 ("the 1990 Budget Act").

Section 204(h), as added, requires the Secretary of Agriculture to provide for reductions in producer proceeds of milk marketed for commercial use, 1991–95. Reductions, as provided for in the statute, apply to all milk produced in the area encompassed by all states of the United States, the District of Columbia, the territories of the United States, and Puerto Rico. The Secretary is authorized to issue rules and regulations implementing the reduction. "Marketed for commercial use" is defined to mean all milk which is disposed of in raw or processed form by voluntary or involuntary sale, barter or exchange, or by gift. Section 204(h) requires that the amount by which the price is reduced be paid to the Commodity Credit Corporation (*CCC*). The statute provides that such amounts shall be collected and remitted in the manner specified by the Secretary. CCC is an agency within the United States Department of Agriculture (*Department*).

Previous price reduction programs have been implemented under section 201 of the 1949 Act. Like section 204(h), section 201 applied to milk produced in the *United States*. Section 201, however, defined *United States* for that section only to mean the area encompassed by the 48 contiguous states of the continental United States. Section 204 does not contain a similar definition. Accordingly the definition in section 301 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301) applies as that definition is made applicable to the 1949 Act by section 408(j) of the 1949 Act (7 U.S.C. 1428(j)). Section 301(a)(5) of the 1938 Act defines *United States* to mean the several states and territories, the District of Columbia, and Puerto Rico. Accordingly, the new regulation applies to any milk produced in any of the 50 states, any territory of the United States, the District of Columbia, or Puerto Rico.

Section 204(h) provides that the per hundredweight price reduction shall be 5 cents for 1991 marketings. For 1992–95 marketings, it will be 11.25 cents per hundredweight except that the reduction for those years will be increased to compensate for refunds by CCC of amounts resulting from the previous year's reduction.

Section 204(h)(3) provides that the Secretary must refund the entire amount of the reduction in the price of milk received by a producer during a calendar year if the producer provides evidence that the producer did not increase marketings in the calendar year that such price reduction was in effect when compared with marketings in the immediately preceding calendar year.

Section 204(i) provides for a civil penalty to be paid to the Secretary in any case where a person fails to collect or remit the amount of the price reduction required by section 204(h) or fails to comply with requirements for recordkeeping or other requirements imposed by the Secretary to carry out the program. The penalty liability, as set forth in the statute, is up to the amount determined by multiplying: (i) The quantity of milk involved in the violation by, (ii) the support rate for the applicable calendar year for milk. Section 204(i) provides that the Secretary may enforce the section 204(h) reduction program in the federal courts.

These regulations generally follow those previously implemented for collecting and remitting amounts by which the price received by producers for milk marketed for commercial use was reduced under section 201 for milk marketed by producers to January 1990. Necessary and appropriate adjustments have been made and refund procedures and rules have been added. The regulations do not cover the price reduction which, if certain milk surplus conditions should exist in the future, is required by section 204(g) of the 1949 Act as amended by FACTA.

Several provisions of the new regulations are summarized below followed by the full regulations.

1. Area of Coverage

As indicated, the new price reduction is applicable in a broader geographic area than the January 1990 reduction implemented under section 201 of the 1949 Act which was limited to production in the 48 contiguous states.

2. "Responsible Persons"

As with previous milk price reduction programs, remittance to CCC of the amount by which the price is reduced will be the duty of "responsible persons", as defined here. The responsible person generally will be the person who pays, or is obligated to pay, the producer for the milk. The producer will be the responsible person, however, when the producer markets milk of the producer's own production for commercial use to consumers either directly or through wholesale or retail outlets, or markets milk outside the area of production covered by the rule. As to the second condition—for marketings outside the area of production—this will mean that the producer will be responsible directly for the remittance when the producer markets the milk in a place other than any of the 50 states, the District of Columbia, any territory of the United States, or Puerto Rico.

3. Time for Remittance

Remittances will be due by the end of the month following the month in which the milk is marketed.

4. Refunds

Refunds are available only to those persons who were producers of milk at the farm level and whose producer proceeds were reduced by the statutory reduction. The refund provisions only apply to refunds of the amounts by which prices are reduced for 1991–95 marketings. Refunds will be made and administered through the county committees of the Agricultural Stabilization and Conservation Service (ASCS) of USDA. Under the regulations promulgated in this rule, a person may obtain a refund of the amount of price reduction for that person's marketings as a producer of milk if the person seeking the refund and each of the persons considered to be "related persons" with that person did not, during the year for which the reduction was made, exceed their marketings for the preceding year. The burden of proof that the refund is due will be on the person seeking the refund. Proof that monies to be refunded were actually

paid to CCC will be required in those instances in which the producer was a "responsible person." The marketings counted will be all marketings of milk for commercial use in which the person or related person involved had an interest in the relevant period. Other marketings may be counted as needed to insure that there were no net increase in marketings. A specific provision is contained in the regulations to prohibit the use of schemes or devices designed to, or having the effect of, creating an entitlement to a refund where otherwise no refund would be due, such as where cows are moved at the end of the year for which a refund is requested, solely to create a refund claim, and then returned after then end of the year to the originating farm.

Section 204 does not, as such, require a full year comparison of marketings. Rather, it requires no net increase in the calendar year of the year for which the refund is requested. Under the adopted regulations, for persons leaving dairying when a price reduction program is in effect, the refund comparison of marketings will be made only for those months in the year in which the person was in business as compared with the corresponding months in the preceding year.

5. Related Persons

The regulations provide that a person may not receive a refund unless each "related person" also did not increase milk marketings for commercial use in the year for which the refund is requested. The regulations define such a related person to be:

(i) The spouse and minor child of such person and/or guardian of such child;

(ii) Any corporation in which the person is a stockholder, shareholder, or owner, if such person has equal to, or greater than, a 10 percent interest in such corporation;

(iii) Any partnership, joint venture, or other enterprise in which the person has an ownership interest or financial interest; and

(iv) Any trust in which such person or any of the persons or entities listed in clauses (i) through (iii) is a beneficiary or has a financial interest.

If the party seeking a refund is a corporation, partnership, or other joint venture, the related person will be considered to be each participant or stockholder of the entity and persons "related" with those participants or stockholders under the rules that apply to individuals except that in the case of a corporation, persons with less than a 10 percent interest in the corporation will not be considered related persons to the corporation.

6. Time for Filing a Request for Refund

Requests for refunds will be handled through ASCS county committees. Refund requests may not be filed before the end of the year for which the refund is requested and must be filed by March 15 of the following year.

7. Overdisbursements

If there is a payment of a refund not due, the overpayment must be repaid to CCC with interest. If the refund is obtained through a false representation or through some other program violation, a penalty payable to CCC may be assessed up to the full statutory amount against the persons responsible for the violation.

8. Transfer of Milk Marketing History

The regulations permit a transfer of the history of milk marketings in the base period and refund period only in certain instances where there is an intra-family transfer of the dairy operations. Such transfers of dairy operations often may not involve a material change in the operation. Specifically, a transfer is allowed only where a person takes over the entire dairy operation of a *family member* (as defined in the regulations) who has left the dairy business entirely. If a transfer is allowed, the person taking over the farm will be permitted to count the marketings of that family member in the preceding year for purposes of collecting a refund of the amount of price reduction made in the transfer year, including those made against the transferor's marketings. The person taking over the farm will have to count marketings made by the transferor in the year for which the refund is requested as the new owner's own marketings for the transfer year for purposes of calculating refund eligibility for amounts by which price reductions were made in the transfer year and the following year. The transferor will not be eligible for a refund for the transfer year and will not be considered to have transfer year marketing for purposes of a refund for the following year should the transferor return to business.

For these purposes, a *family member* of the new owner is defined to be:

(i) The parent, grandparent, or legal guardian of the new owner;

(ii) The spouse of a parent or grandparent of the new owner;

(iii) The new owner's spouse.

(iv) A son, daughter, grandson or granddaughter of the new owner;

(v) A spouse of a son, daughter, grandson, or granddaughter of the new owner;

(vi) Siblings of the new owner; or,

(vii) Spouses of siblings of the new owner.

9. Other Provisions

A number of other changes from the regulations that applied to the January 1990 price reduction have been made as needed or appropriate to facilitate program operations and to clarify program provisions. The regulations contain appeal procedures, record-keeping requirements and other program provisions.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

PART 1430—[AMENDED]

Accordingly, 7 CFR part 1430 is amended by removing the Subpart entitled "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1990 to January 31, 1990" (§§ 1430.340–1430.351) and replacing that subpart with a new Subpart (§§ 1430.340–1430.361) as follows:

Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991 to December 31, 1995

Sec.

1430.340 General statement.
1430.341 Definitions.
1430.342 Responsibility for administration of regulations.
1430.343 Required reductions and remittances.
1430.344 Refunds—General provisions for eligibility and other requirements.
1430.345 Determination of marketings for refund purposes; Related persons; Refunds for a year in which the person whose proceeds were reduced leaves the dairy business.
1430.346 Transfer of milk marketing history for purposes of establishing eligibility for a refund.
1430.347 Availability of records and facilities.
1430.348 Adjustment of accounts.
1430.349 Charges and penalties.
1430.350 Limitation of authority.
1430.351 Estates and trusts; minors.
1430.352 Appeals.
1430.353 Over-disbursement.
1430.354 Death, incompetency, or disappearance.
1430.355 Assignment.
1430.356 Instructions and forms.
1430.357 Scheme or device.
1430.358 Continuing obligations.
1430.359 Administrative review of charges against responsible persons.
1430.360 Offsets and withholdings.
1430.361 Paperwork Reduction Act assigned number.

Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991 to December 31, 1995

Authority: 7 U.S.C. 1446e.

§ 1430.340 General statement.

(a) *Purpose.* This subpart implements the provisions of section 204 of the Agricultural Act of 1949 as amended by section 1105(g)(3) of the Omnibus Budget Reconciliation Act of 1990 under which the Secretary of Agriculture is required to provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during calendar years 1991–95.

(b) *Amount of the reduction.* (1) The amount of the price reduction shall be 5 cents per hundredweight of milk marketed by producers for commercial use in 1991 and, except as provided in (ii), 11.25 cents per hundredweight of milk marketed by producers for commercial use in the period 1992–95.

(2) On or before May 1 of each of the calendar years 1992 through 1995, the amount of reduction per hundredweight for each such year shall be adjusted individually for the remainder of the relevant year to compensate for refunds of price reductions made in the preceding calendar year which were collected by CCC under this subpart under paragraphs (b)(1) and (b)(2) of this section. The adjustment shall be announced by the Secretary by the required date.

(3) The reductions provided for in paragraphs (b) (1) and (2) of this section shall be in addition to any other reduction in the price received by producers as may be required under law.

(4) The reductions provided for in paragraphs (b) (1) and (2) of this section shall be made and remitted to the CCC in the manner prescribed in § 1430.343 of these regulations.

(c) *Refund.* To the extent provided for in this subpart, a person may recover the entire amount by which prices were, for that producer, reduced under paragraphs (b)(1) or (b)(2) of this section for a year, if, as determined under the provisions in this subpart, the marketings of milk individually by such person and each of the persons who are *related persons* with respect to that person were not greater than the marketings of milk by those persons for the preceding year.

(d) *Applicability* The provisions of this subpart shall apply to all milk produced in the United States that is marketed for commercial use by producers during the period beginning on January 1, 1991, and ending December 31, 1995. The term *United States* shall not be limited to the 48 contiguous states of the continental United States but shall have the meaning assigned in 7 CFR 1430.341.

§ 1430.341 Definitions.

For purposes of this subpart unless otherwise specified, the following terms shall have the following meaning and shall be applied as if both the singular and plural forms were used:

(a) *AMS* means the Department's Agricultural Marketing Service.

(b) *ASCS* means the Department's Agricultural Stabilization and Conservation Service.

(c) *Base period* means the calendar year immediately preceding the calendar year for which a refund is being requested.

(d) *CCC* means the Commodity Credit Corporation.

(e) *Calendar year* means, for the relevant year, the 12-month period beginning January 1 and ending December 31 of that year.

(f) *County committee* means an ASCS county committee established under 16 U.S.C. at 590h.

(g) *Dairy Division* means the Dairy Division of the AMS.

(h) *DASCO* means the Deputy Administrator, State and County Operations, of the ASCS.

(i) *Department* means the United States Department of Agriculture.

(j) *Milk marketed for commercial use* shall include all cow's milk which is disposed of in raw or processed form by voluntary or involuntary sale, barter or exchange, or by gift.

(k) *Milk marketing* means milk marketed for commercial use.

(l) *Person* means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity, and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(m) *Producer* means any person who produced milk through the milking of cows.

(n) *Producer's Successor* means for purposes of this section only any person who receives or is entitled to receive payment for milk as a producer in those instances in which the producer will otherwise receive no payment for the milk from any source.

(o) *Reduction* means that amount by which the price received for milk marketed for commercial use by producers is reduced, or is required to be reduced, in accordance with the provisions of this subpart.

(p) *Refund* means the money that is or may be returned to a producer under this subpart by CCC for price reductions made under this subpart.

(q) *Refund period* means the calendar year for which a refund is being requested.

(r) *Responsible person* means:

(1) Any person who pays, or who is contractually or otherwise required to pay, a producer or producer's successor for milk marketed by a producer for commercial use, except to the extent that the producer of the milk is the responsible person under paragraph (r)(2) of this section; Provided, that the responsible persons under this paragraph shall include, but are not limited to, handlers of milk, including a handler regulated under a Federal milk order to the extent of, but not limited to, milk for which payments are transmitted by the handler to a Market Administrator under such an order for transmittal by the Market Administrator to individual producers; and,

(2) Any producer with respect to milk of the producer's own production who markets such milk for commercial use in the form of milk or milk products:

(i) To consumers either directly or through retail or wholesale outlets, or

(ii) To persons located outside of the United States.

(s) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has been delegated or to whom authority may hereafter be delegated to act in his stead.

(t) *State Committee* means an ASCS state committee established under 16 U.S.C. at 590h.

(u) *United States* means the 50 states of the United States of America, the District of Columbia, Puerto Rico, and the territories of the United States of America.

(v) *United States Bank* means a bank organized under the laws of the United States, a state of the United States, or the District of Columbia.

(w) *Vice President, CCC* means the Vice President of CCC, who is also the Administrator of AMS.

§ 1430.342 Responsibility for administration of regulations.

(a) *Collection.* The AMS and its Dairy Division shall have the responsibility for administering the provisions of this subpart which relate to the collection of the reduction in the price to be received by producers of milk and the remittance of the reduction to the CCC. Administrative subpoenas, as may be determined to be necessary for the administration of this subpart and as

permitted by law, may be issued by the Vice President, CCC, or his designee.

(b) *Refund.* DASCO, through the ASCS State and county committees, shall have the responsibility for administering the provisions of this subpart which relate to the establishment and determinations of milk marketings during a base period for the purpose of refunds, and all other matters relating to refunds including administrative oversight of payments and the recovery of overpayments.

§ 1430.343 Required reductions and remittances.

(a) *Required reductions.* (1) A reduction of five (5) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1991, and ending December 31, 1991.

(2) Except as provided by the provisions of paragraph (a)(3) of this section, a reduction of eleven and twenty-five hundredths (11.25) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1992, and ending December 31, 1995.

(3) For each of the calendar years 1992–95, the reduction of eleven and twenty-five hundredths (11.25) cents per hundredweight specifically provided for in paragraph (a)(2) of this section with respect to marketings of milk for commercial use in those years, shall be increased on, or before, May 1 of the year for the remainder of the year by an amount per hundredweight of milk that is necessary in order to compensate for refunds made to producers of milk for price reductions collected under this subpart on milk marketed for the immediately preceding calendar year.

(b) *Remittances.* Each responsible person shall remit to the CCC the funds represented by the reductions required by this subpart by the last day of the month following the month in which the milk was marketed. For all milk marketed outside of the United States by producers, the producer shall also remit the funds represented by the reductions to CCC by the last day of the month following the month in which the milk was marketed, unless the person paying the producer for such milk has remitted the funds by that date, in which case the payment shall be considered to have been made by the producer and may be retained by CCC on that basis. Remittances to the CCC shall be made using negotiable instruments payable in United States currency, drawn on a United States bank, and made payable to the *Commodity Credit Corporation* or to the CCC. Remittances and reports required under this subpart shall be mailed to the location designated by the Dairy Division.

(c) *Remittance report.* (1) For each month that a person is a responsible person, such person shall, in addition to remitting the funds for the reduction, file a report as prescribed by the Dairy Division which shall include:

(i) The identity of the responsible person, including such person's business address;

(ii) The month in which the applicable marketings occurred;

(iii) The total pounds of milk to which the remittance applies; and

(iv) Any additional information required by the Dairy Division.

(2) The report required in paragraph (c)(1) of this section shall be submitted by the due date for the remittances required by this subpart.

(d) Application of Remittances. Funds received by the CCC pursuant to this subpart shall be applied first to any outstanding penalty, then to late-payment interest and other charges, and then to the principal amount due.

(e) The funds remitted to the CCC under this paragraph shall be considered to be included in the payments made to a producer of milk for purposes of the minimum price provisions of the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937.

§ 1430.344 Refunds—General provisions for eligibility and other requirements.

(a) A refund of a reduction in producer proceeds made under this subpart may be made only to the extent explicitly provided for in this subpart. Such refunds may be made only for milk marketed by producers in the period 1991–95. The monies that may be refunded to a person shall only include the reductions in proceeds of that person as provided for in § 1430.343(a) pursuant to provisions of the Omnibus Budget Reconciliation Act of 1990.

(b) A person may receive a refund only for reductions actually made in that person's producer proceeds for milk and only for those monies actually remitted to CCC.

(c) If other conditions are met, a person may receive a refund of the entire refundable reduction made under this subpart for a calendar year in that person's milk producer proceeds if for that year the marketings of milk for commercial use, individually, of that person and each related person with respect to that person were not greater than their marketings of milk for commercial use in the applicable base period. This calculation will be made separately for the person seeking the refund and each related person.

(d) The person seeking the refund shall be responsible to prove that the refund is due. Such person must present all relevant data needed by the county committee to establish eligibility for the payment or requested by the County Committee for that purpose. That information will include all information needed to make the necessary determinations concerning related persons. The person seeking the refund for all relevant months must present month-by-month marketing data for that person and related persons for the relevant time periods.

(e) If the person seeking the refund was a responsible person for such person's own milk production, then such person must also provide proof that the required remittances were paid to CCC. If the responsible person was a third party, the person seeking the refund shall be required to certify whether, to the best of such person's knowledge, the reductions to be refunded were remitted to the CCC. If the third party did not make full payment for all marketings of all producers for the relevant period, the refund eligibility of individual producer shall be adjusted in such manner as DASCO determines to be appropriate taking into consideration the purposes of this subpart.

(f) The burden of proof on all refund matters shall lie with the person seeking to obtain, or retain, a refund from CCC. Such persons may be required to obtain certifications and documentation as needed from third parties to establish eligibility for a refund.

(g) A person may seek a refund as a representative of a producer where such representation arises by reason of the death, disappearance or incompetency of the producer or by other cause as permitted by DASCO.

(h) No persons may apply for a refund before the end of the year of the reduction to be refunded.

(i) A complete application for a refund with all necessary documentation must be submitted to the county committee by March 15 of the year following the year for which the refund is requested, or if March 15 is not a business day, the next business day thereafter.

(j) If an overpayment of a refund is made, such overpayment shall be repaid to CCC with interest from the date of the overpayment. The repayment shall be

due from the person who obtained the overpayment and any person who knowingly participated in a scheme or device to obtain the overpayment. If the overpayment resulted from a failure to comply with the provisions of this subpart, or results from a violation of this subpart, the persons responsible shall, in addition, be liable for a civil penalty to be paid to CCC. The amount of the penalty may be up to the amount equal to the quantity of milk involved in the overpayment multiplied by the support price for milk at the time the reduction in proceeds was made. These liabilities shall be in addition to any others imposed by law.

(k) All determinations made by county committee with respect to the granting of refunds or collection of overpayments shall be subject to review by DASCO, as deemed needed by DASCO to assure uniformity of treatment and to assure that there is full compliance with the provisions of this subpart.

§ 1430.345 Determination of marketings for refund purposes; Related persons; Refunds for years in which the person whose proceeds were reduced leaves the dairy business.

(a) For purposes of calculating refund eligibility under this subpart, the marketings of a person for commercial use shall include all such marketings for the relevant period in which such person had an interest.

(b) As determined appropriate by DASCO to accomplish the goals of the program, the county committee may also consider marketings of milk occurring in the base period or in the reduction year of any operation with respect to which the person had an interest in the herd, the dairy animals, or in the facilities involved in the production at any time during the base period or reduction year.

(c) DASCO may consider a person to be in compliance with the requirements for the refund despite a failure to comply with conditions otherwise required by this subpart if such relief is deemed to be needed to afford fair and equitable treatment and the granting of such relief will not impair the accomplishment of the goals of the program.

(d)(1) Persons considered to be a related person with another person for purposes of calculating refund eligibility shall be as follows:

(i) The spouse and minor child of such person and/or guardian of such child;

(ii) Any corporation in which the person is a stockholder, shareholder, or owner of equal to, or greater than, a 10 percent interest in such corporation;

(iii) Any partnership, joint venture, or other enterprise in which the person has an ownership interest or financial interest; and

(iv) Any trust in which the person seeking the refund or any person listed paragraphs (d)(1) (i) through (iii) of this section is a beneficiary or has a financial interest.

(2) If the person seeking a refund is a corporation, partnership, or other entity, the related persons shall be considered to be:

(i) Any participant, owner, or stockholder in the entity except, in the case of corporations only, persons with less than a 10 percent share in the corporation shall not be considered a related person with respect to that corporation; and

(ii) As determined under the provisions of paragraph (d)(1) of this section, any person who is a related person with respect to the persons identified as a related person to an entity under (d)(2)(i) of this section.

§ 1430.346 Transfer of milk marketing history for purposes of establishing eligibility for a refund.

(a) If a producer has acquired the complete dairy operation (i.e., all land, all equipment and all dairy cattle at all locations) of a family member, the milk marketing history of the acquiring producer may be increased by the milk marketing history of the family member. The preceding sentence shall apply only if the transferor no longer has any interest in any dairy, dairy herd, or in any dairy production. No other transfer of a milk marketing history shall be permitted.

(b) A request for a transfer of the milk marketing history must be made to the county committee of the county where the acquiring producer's dairy farm is located. A transfer may be approved only if adequate records are presented to establish eligibility for the transfer.

(c) For purposes of this section:

(1) *A family member* of the transferee of the dairy operation shall include all of the following:

(i) The parent, grandparent, or legal guardian of the transferee;

(ii) The spouse of a parent or grandparent of the transferee;

(iii) The transferee's spouse;

(iv) The son, daughter, grandson or granddaughter of the transferee, or the spouse of any such persons;

(v) Siblings of the transferee and the spouses of such siblings.

(2) *Milk marketing history* means the milk marketings by the transferor of the dairy operations in the year preceding the year of the transfer of the complete dairy operation which could have been used by the transferor to claim a refund of a reduction in producer proceeds made under this subpart.

(d) Notwithstanding any other provisions of this subpart, if a milk marketing history is transferred:

(1) The transferor shall not be eligible for a refund of a reduction in producer proceeds made in the year of the transfer.

(2) The marketing of milk in the year of the transfer which could be attributed to the transferor shall be considered solely to be marketings by the transferee for calculations relating to refunds of reductions made in the transfer year or in the following year; and

(3) The transferee, to the extent that other condition are met, may claim refunds of reduction made in the proceeds of the transferor for the transfer year.

(e) A transfer of milk marketing history under this section shall become null and void if the transferor returns to dairying at any time prior to the payment of a refund to the transferee which took into account the transferor's marketings of milk.

§ 1430.347 Availability of records and facilities.

(a) *Records to be maintained.* Each responsible person and person seeking a refund shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart and/or eligibility for a refund.

(b) *Availability of records and facilities.* Each responsible person or other persons affected by the provisions of this subpart shall make available to authorized representatives of the CCC or the Department all records and facilities pertaining to such person's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by the person required to keep such records for a period of three years beginning at the end of the calendar year to which such records pertain, or for such longer period as the Dairy Division or the CCC may require by notice to such person.

§ 1430.348 Adjustment of accounts.

Except as otherwise provided in this section, whenever the responsible person or person obtaining a refund becomes aware through an audit or other means that an error in payment or refund has been made, such person must immediately notify the CCC of the error and make any payment to the CCC that is due the CCC, together with any late-payment interest and other charges as

are provided for in this subpart. If the error is otherwise unknown to the person involved until notice is given by the CCC, the underpayment plus late-payment interest and other charges provided for in this subpart shall be made by the next date for remitting reductions as provided in § 1430.343 or within the time specified by the CCC if no subsequent remittances are required by this subpart from such person. Overpayments to the CCC by a responsible person shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amount otherwise due to the CCC from the responsible person or refunded if no amounts are due to the CCC from such person. Nothing in this section shall reduce the liability of a person to the CCC for late-payment interest and other charges for underpayment or nonpayment to the CCC.

§ 1430.349 Charges and penalties.

(a) *Charge for dishonored negotiable instruments.* Each person who issues a negotiable instrument to the CCC in connection with this subpart that is not honored because of insufficient funds or any other reason will be charged $25 plus such additional costs as may apply. The amount of this charge shall be in addition to any and all other authorized charges and penalties.

(b) *Late-Payment Interest.* Any unpaid obligation due the CCC under this subpart shall be increased by late-payment interest. Such interest shall be assessed in accordance with the provisions of 7 CFR part 1403 or successor regulations so designated by the Department. The timeliness of payment to the CCC shall be determined based on the applicable postmark date or the date of receipt by the CCC if no postmark date is available or legible.

(c) *Penalties.* (1) In addition to other penalties provided for in this subpart, a civil penalty payable to the CCC shall be due from any responsible person who fails to make a reduction in the price of milk as required in this subpart and from any person who fails to remit to the CCC the funds required to be collected and remitted by this subpart, or fails to comply with any other requirement or provision of this subpart. Such penalty shall be in addition to any other amount due CCC and in addition to any other liability imposed by law. The amount of the penalty shall be up to an amount which is equal to the support price for milk in effect at the time the failure occurs multiplied by the quantity of milk involved. The Vice President, CCC, or a designee, may assess a penalty at less than the maximum amount where it is determined equitable in those cases where the failure was unintentional and such relief can be granted without harm to the program.

(2) The Vice President, CCC, or a designee, shall notify any person against whom a penalty is to be assessed of the intention to assess such penalty and provide such person with an opportunity for an administrative hearing.

§ 1430.350 Limitation of authority.

(a) State and county committees or their designees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) A State committee may take any action authorized or required by the regulations in this subpart to be taken by a county committee when such action has not been taken by the county committee. A State committee may also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude DASCO, or a designee, from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 1430.351 Estates and trusts; minors.

(a) For purposes of this subpart, a receiver of an insolvent debtor's estate and the trustee of a trust estate may, for the purpose of this subpart, be considered to represent an insolvent producer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be production of the producer which such receiver or trustee represents. Program documents executed by the receiver or trustee will be accepted only if they are legally authorized and valid and such person has the authority to execute the applicable documents.

(b) A person seeking a refund under the provisions of this part who is a minor shall be eligible for a refund under the regulations in this subpart only if:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are signed by the guardian; or

(3) As determined by DASCO, an acceptable bond is furnished by an acceptable surety which protects CCC against any loss as may result to CCC in connection with the minor and the administration of this subpart.

§ 1430.352 Appeals.

Except as otherwise provided in this subpart with respect to matters under the supervision of AMS, the appeal regulations in 7 CFR part 780 shall be applicable to appeals of determinations made under this subpart.

§ 1430.353 Over-disbursement.

If a refund is disbursed under this subpart which exceeds the amount allowed in this subpart, the person receiving payment and that person's successors shall be personally liable for repayment of the amount of such excess payment plus interest computed in accordance with 7 CFR part 1403, if applicable, or in the amount allowed by law if part 1403 does not apply.

§ 1430.354 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any person who is entitled to a refund, such refund may be made to the person or persons who are specified in 7 CFR part 707. The person requesting such refund shall file Form ASCS–325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent" as provided in that part or meet such other requirements as may be imposed in successor regulations so designated by the Department.

§ 1430.355 Assignment.

Any person who may be entitled to a refund may assign his rights to such refund in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

§ 1430.356 Instructions and forms.

Such forms and instructions as are necessary for establishing milk marketings during the base period and obtaining refunds pursuant to the provisions in this subpart may be obtained from the county ASCS office.

§ 1430.357 Scheme or device.

(a) Any person who is determined by the CCC to have knowingly adopted, or participated in, any scheme or device which tends to defeat, or has the effect of defeating, the implementation of, or purposes of, the provisions of this subpart, or the program provided for in this subpart, or who makes any fraudulent representation or

misrepresents any fact affecting a determination under this subpart, shall be considered to have knowingly violated the provisions of this subpart and shall be liable for the civil penalty provided for in this subpart. In such event, in addition to any penalties which are due, all amounts which would have been due to the CCC for the reductions required by this subpart but which were not paid because of the prohibited activity shall be immediately payable by such person to the CCC.

(b) All or any part of the refunds due a person under this part may be withheld or required to be refunded to the CCC with interest computed in accordance with 7 CFR part 1403 if the person adopts, or participates in adopting, any scheme or device designed to evade, or which has the effect of evading, the rules and purposes of this part. Such acts shall subject the person involved to penalties at the rate provided for in this subpart, and such acts include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part, submitting false information to the county committee, transferring dairy cows to another dairy operation in order to meet requirements for refunds, or creating fictitious entities. This liability shall be in addition to any other liability imposed in accordance with this subpart or any other provision of law.

§ 1430.358 Continuing obligations.

The obligations of any person that arise under this subpart shall continue in effect until final payment or other disposition agreed to by the CCC even though the reductions provided for in this part may no longer be required.

§ 1430.359 Administrative review of charges against responsible persons.

Any responsible person who is adversely affected by any determination of liability under the terms and conditions of this subpart that relate to the collection of the reductions required by this subpart shall be able to obtain further consideration of such determination by filing a request for reconsideration with the Director of the Dairy Division within 30 days of the date of notice of the determination. If, upon reconsideration by the Director, the responsible person is dissatisfied with the new determination, such person may obtain a review of such determination and an informal hearing by filing an appeal with the Vice President, CCC. Such appeal must be filed within 15 days of the date of the redetermination by the Director. Such appeals to the Vice President, CCC, will, to the extent practicable, be conducted in the same manner as administrative appeals which are conducted under 7 CFR part 780. The decision on such appeal shall constitute the final agency action in the matter.

§ 1430.360 Offsets and withholdings.

The CCC may offset or withhold any amounts due the CCC under this subpart in accordance with the provisions of 7 CFR part 1403 or successor regulations as designated by the Department.

§ 1430.361 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the reduction related information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB number 0560–0126 has been assigned. Information collection requirements related to refunds will be submitted for approval at a later date.

Signed at Washington, DC, on January 31, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–2784 Filed 2–1–91; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–268–AD; Amdt. 39–6880]

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T90–26–52, which was previously made effective as to all known U.S. owners and operators of Aerospatiale Model ATR42 and ATR72 series airplanes by individual telegrams. This AD requires repetitive detailed visual inspections to detect defects in the aileron control system, and repair or replacement, if necessary; flight checks and ground inspections of certain airplanes; and a revision to the Airplane Flight Manual and the installation of a warning placard to prohibit the use of roll trim in certain situations. This action is prompted by recent reports of roll departures at manual disconnection of the autopilot, one of which led to an 1,800-foot altitude loss. This condition, if not corrected, could result in severely reduced controllability of the airplane.

DATES: Effective February 19, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T90–26–52, issued December 13, 1990, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Flight Test and Systems Branch, ANM–111; telephone (206) 227–2118. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the FAA issued telegraphic AD T90–24–51, applicable to Model ATR42 and ATR72 series airplanes, to require a one-time inspection to detect defects in the aileron control system; a flight check to detect incorrect trim tab settings; and repair or replacement of defective parts, if necesary. In addition, that AD required operators to report any defects to the FAA. That action was prompted by a report of a roll departure at manual disconnection of the autopilot, leading to an 1,800-foot altitude loss. This condition, if not corrected, could result in severely reduced controllability of the airplane.

Subsequent to the issuance of that telegraphic AD, the FAA received 19 reports of bad bearings in the aileron control system at various locations in the wings. In addition, the FAA was advised that analysis of the initial flight check data indicated that a revision was warranted of the flight check procedures currently required by AD T90–24–51, pertaining to the verification of flight control trim settings. Apparently, affected operators were having difficulty meeting the specified flight conditions (speed, C.G. location, and test procedures) in order to perform the flight check properly and obtain meaningful results.

Additionally, one operator found that a rudder tab setting was out of required tolerances. AD T90–24–51 did not require a check of the rudder tab settings. Incorrect rudder tab settings, if not detected and corrected, could result

in reduced controllability of the airplane, and may have contributed to the incident that gave rise to the issuance of Telegraphic AD T90–24–51.

In addition, further analysis of the flight data from the reported incident indicated that the autopilot may have masked a severe out-of-trim condition established by the pilot, while the autopilot was engaged. This out-of-trim condition resulted in unexpected high roll forces being experienced by the pilot at autopilot disconnect. For this reason, the FAA determined that roll trim in excess of plus or minus one unit (one dot) of roll trim must be prohibited when the autopilot is in use.

Aerospatiale has issued Service Bulletins ATR42–27–0500 and ATR72–27–1013, both dated November 22, 1990, which describe procedures for a flight check to detect incorrect trim tab settings, and repair, if necessary. Aerospatiale has also issued Service Bulletins ATR42–27–0051 and ART72–27–1014, both dated November 22, 1990, which describe procedures for a ground inspection to detect incorrect rudder tab settings, and repair or replacement of defective parts, if necessary. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified these service bulletins as mandatory, and has issued Telegraphic Airworthiness Directives 090–201–033(B)R1 (for the model ATR42) and 090–220–034(B) (for the model ATR72) addressing this subject.

Aerospatiale has also issued Service Bulletin ATR42–27–0022, Revision 1, dated April 14, 1988, which describes procedures to inspect the aileron control linkage crank assembly, and repair, if necessary. The DGAC has not classified this service bulletin as mandatory.

This airplane model is manfuactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued telegraphic AD T90–26–52 on December 13, 1990, which supersedes telegraphic AD T90–24–51 to require: (1) Repetitive detailed visual inspections to detect defects in the aileron control system; (2) a revision of the currently required flight check procedures; (3) a ground inspection to detect incorrect rudder tab settings; (4) repair or replacement of defective parts, if necessary; and (5) a revision to the Airplane Flight Manual and the installation of a warning placard in the cockpit to prohibit the use of roll trim in excess of plus or minus one unit (one dot) when the autopilot is in use, except to trim for an engine failure condition. In addition, the AD requires that operators report any defects to the FAA.

These are considered to be interim actions until final action is identified, at which time the FAA may consider further rulemaking to address it.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 13, 1990, to all known U.S. owners and operators of Aerospatiale Model ATR42 and ATR72 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding telegraphic AD T90–24–51, issued November 16, 1990, with the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR42 and ATR72 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced controllability of the airplane resulting from increased friction in the aileron control system or incorrect settings of the aileron or rudder trim tabs, accomplish the following:

A. Within 48 hours after the effective date of this AD, accomplish the following:

1. Add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) and notify all crew members. This may be accomplished by inserting a copy of this AD in the AFM. "Use of roll trim in excess of plus or minus one unit (one dot) with the autopilot engaged is prohibited except for an engine failure condition."

2. Install a warning placard in the cockpit in full view of the pilot and co-pilot, which states:

"WARNING—DO NOT EXCEED PLUS OR MINUS ONE UNIT (ONE DOT) OF ROLL TRIM WITH THE AUTOPILOT ENGAGED EXCEPT FOR AN ENGINE FAILURE CONDITION."

B. Prior to the total accumulation of 1,000 hours time-in-service on the airplane, or within 50 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 hours time-in-service, accomplish the following:

1. Open all inspection plates in the wing which provide access to the aileron control system; perform a detailed visual inspection of the aileron control system in accordance with the manufacturer's Maintenance Manual and verify that there is freedom of movement without binding; and, for the Model ATR42, verify, in accordance with Aerospatiale Service Bulletin ATR42–27–0022, Revision 1, dated April 14, 1988, that there is no free play in excess of tolerances specified in the service bulletin.

2. Perform a detailed visual inspection of all bearings of the aileron control system located in the wings for proper operation and the absence of physical defects.

3. If discrepancies are found, prior to further flight, repair or replace any defective parts with serviceable parts, or otherwise correct discrepancies, in accordance with the manufacturer's Maintenance Manual.

C. For all Model ATR42 and ATR72 series airplanes on which the rudder and/or elevator tab rods have been replaced in accordance with Service Bulletins ATR42-27-0046, dated June 11, 1990, ATR42-27-0049, dated September 14, 1990, ATR72-27-1008, dated June 11, 1990, or ATR72-27-1012, dated October 29, 1990, accomplish the following:

1. If either of the following conditions apply, within 15 days after the effective date of this AD, perform a flight check in accordance with paragraph C. of Aerospatiale Service Bulletins ATR42-27-0050 and ATR72-27-1013, both dated November 22, 1990, as applicable:

a. If, as a result of the flight check required by telegraphic AD T90-24-51 (issued November 16, 1990), the trim settings were determined to be outside the acceptable values specified in the telegraphic AD; or

b. If that flight check has not been accomplished as of the effective date of this AD.

The flight check must not be performed during commercial flight.

2. If one or more of the trim indications are out of tolerance, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Airplane Transport Directorate.

Note: If the flight check required by paragraph C. of telegraphic AD T90-24-51 has been performed, and the trim settings were within the acceptable values specified in that telegraphic AD, no further action is required by this paragraph.

D. For all Model ATR42 and ATR72 series airplanes on which the rudder tab rods have been replaced in accordance with Service Bulletins ATR42-27-0046, dated June 11, 1990, ATR42-27-0049, dated September 14, 1990, ATR72-27-1008, dated June 11, 1990, or ATR72-27-1012, dated October 29, 1990:

1. Within 7 days after the effective date of this AD, perform a ground inspection to detect incorrect rudder and trim tab settings, in accordance with Aerospatiale Service Bulletins ATR42-27-0051 and ATR72-27-0014, both dated November 22, 1990, as applicable.

2. If discrepancies are found, prior to further flight, repair or replace defective parts in accordance with the service bulletins.

E. Within 10 days after accomplishing the inspections required by paragraphs B., C., and D. of this AD, submit a written report of all defects to the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Fax number: (206) 227-1320.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This AD supersedes telegraphic AD T90-24-51, issued on November 16, 1990.

This amendment becomes effective February 19, 1991 as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T90-26-52, issued December 13, 1990, which contained this amendment.

Issued in Renton, Washington, on January 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-2619 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-163-AD; Amdt. 39-6884]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection of certain trailing edge flap tracts for adequate cadmium plating of the fail-safe bar bolt holes and plating of such holes, if necessary. This amendment is prompted by reports of missing cadmium plating and corrosion in certain flap track fail-safe bar bolt holes. This condition, if not corrected, could result in fracture of the trailing edge flap track, separation of the flap supported by the track, and resultant reduction of the controllability of the airplane and/or damage to other structure from impact with the departing debris.

EFFECTIVE DATE: March 11, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2773. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires inspection of certain trailing edge flap tracks for adequate cadmium plating of the fail-safe bar bolt holes and plating of such holes, if necessary, was published in the **Federal Register** on September 20, 1990 (55 FR 38699).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that if corrosion is found in some of the bolt holes of a given flap track, paragraph D. of the rule should only require rework of the bolt holes in which corrosion is found and not *all* of the forward four bolt holes on each side of the affected track. The FAA concurs and has revised the final rule accordingly.

One commenter stated that the proposed AD prescribes replacement of the flap tracks if a crack is found in a bolt hole; however, small cracks emanating from bolt holes can be removed by oversizing the hole. Therefore, the commenter requested that the AD be revised to require replacement of the tracks only if the cracks cannot be removed by oversizing. The FAA does not concur with the commenter's request. Although the FAA agrees that it may be possible to remove a small crack by oversizing the track while installed on the airplane, this has never been accomplished on a new style track (in fact, no cracking has been reported on any new-style track), and the manufacturer has not provided such a procedure for this in the service bulletin. However, the AD does allow the use of any "serviceable" track as a replacement; this would not preclude a track which was made "serviceable"

through an FAA-approved procedure to rework a crack. No change to the AD is considered necessary.

One commenter stated that there could be a problem with the availability of Boeing tooling for the repair of corroded holes; this could affect the commenter's ability to comply within the times specified in the AD. The FAA has investigated tooling availability and does not foresee a problem; therefore, no change to the AD is considered necessary.

One commenter noted that there is an inconsistency between an operator-applied cadmium plate, which requires an inspection after 10 years according to the service bulletin, and a factory-applied cadmium plate, which requires no such inspection. The FAA notes that this inspection was not the subject of this AD and, therefore, no change to the final rule is necessary.

One commenter stated that certain discrepancies in the part numbers called out in the service bulletin should be corrected before the AD is issued. The FAA concurs with this comment. These discrepancies are corrected in Revision 1 to the service bulletin, which is referenced in the final rule as an appropriate service information source.

One commenter proposed that the requirement for cadmium plating and chemical film treatment be deleted, and that only the application of a primer be required. The commenter stated that this would avoid uncontrollable chemical reactions on the parts affected that would result from the cadmium plating solution penetrating between faying surfaces of steel and aluminum.

The FAA does not concur with this proposal. The faying surfaces of aluminum and steel are fay sealed during production. This would preclude penetration by the plating solution.

One commenter proposed that a 1,000 flight cycle time period be allowed in proposed paragraph B. between the time any cadmium plating is detected to be missing and the time it is restored. The commenter considered this suggestion to be justified since missing cadmium plating with no corrosion present is a less severe airworthiness problem than corrosion present in a fastener hole, and the rule, as currently proposed, would allow correction of corrosion found in a fastener hole to be deferred for 1,000 flight cycles after it is initially detected. The FAA concurs. As a practical matter, the FAA had not considered that an operator would inspect for the missing cadmium plating condition without having equipment and time available to restore the plating if necessary. The 1,000-flight cycle allowance was made in the case that corrosion is discovered (and then only with additional stringent inspections) because this condition is less likely to exist; and because of the difficulty of the rework procedure and the possibility that tooling may not be immediately available to correct the condition. However, the FAA concurs that the condition of missing cadmium plating is no more critical than the condition of corrosion and missing cadmium plating together; therefore, the final rule has been revised to allow deferral of the cadmium plating restoration if the flap track is subjected to stringent inspections.

The manufacturer commented that the proposed repetitive inspection intervals, imposed in the case where corrosion is found in a bolt hole and an operator elects to continue to operate, are too stringent. The manufacturer cited some data that justifies longer inspection intervals. The FAA concurs that the inspection intervals between eddy current inspection of the bolt holes could be lengthened somewhat without compromising safety; however, the FAA does not concur with the 600 flight cycle repetitive interval recommended in the applicable service bulletin. Upon further consideration, the FAA has determined that the interval for the eddy current inspection may be extended from the proposed 100 flight cycles to 250 flight cycles, and has revised the final rule accordingly.

Since issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 747–57–2256, Revision 1, dated November 15, 1990, which describes procedures for inspection and rework of the forward flap track bolt holes. The revision clarifies and corrects the basic bulletin. The final rule has been revised to reflect this revision as an additional service information source.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

There are approximately 750 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 170 airplanes of U.S. registry will be affected by this AD, that it will take approximately 50 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $340,000.

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action:

(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747–57–2256, dated March 8, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent flap track failures, accomplish the following:

A. Prior to the accumulation of 30,000 flight hours, or 8 years time-in-service, on current production flap tracks, whichever occurs first, or within 2,000 flight cycles after the effective date of this AD, whichever occurs

later, perform a borescope inspection of the forward four bolt holes on each side of the affected trailing edge flap tracks for corrosion and adequate cadmium plating, in accordance with the procedures specified in Boeing Service Bulletin 747-57-2256, dated March 8, 1990, or Revision 1, dated November 15, 1990 (hereafter referred to as "the Bulletin"). If the cadmium plating is adequate, as specified in the Bulletin, and no corrosion or cracks are found, no further action with respect to this AD is required. If the cadmium plating is not adequate, or if corrosion exists in the bolt hole, prior to further flight, conduct an eddy current inspection of the bolt hole for cracks in accordance with the Bulletin.

B. If cadmium plating is not adequate and no corrosion or cracks are found during the inspection required by paragraph A. of this AD, within the next 1,000 flight cycles, cadmium plate the affected bolt holes in accordance with the Bulletin, and conduct the following inspections of the affected track in accordance with the Bulletin until the cadmium plating is restored:

1. Perform a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes within 50 flight-cycles after the inspection required by paragraph A. of this AD, and repeat thereafter at intervals not to exceed 50 flight cycles.

2. Perform an eddy current inspection for cracks of the bolt holes within 250 flight-cycles after the inspection required by paragraph A. of this AD, and repeat thereafter at intervals not to exceed 250 flight cycles.

3. Prior to each flight on which a fifth engine is to be carried, conduct a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes.

C. If cracks are found in any flap track during the inspections required by this AD, prior to further flight, replace the affected flap track with a serviceable track.

D. If corrosion, but no cracking, is found during the inspections required by paragraph A. of this AD, rework the affected bolt holes within the next 1,000 flight cycles in accordance with the Bulletin, and conduct the following inspections of the affected track in accordance with the Bulletin until the rework is accomplished:

1. Perform a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes within 50 flight-cycles after the inspection required by paragraph A. of this AD, and repeat thereafter at intervals not to exceed 50 flight cycles.

2. Perform an eddy current inspection for cracks of all the bolt holes found to have corrosion, within 250 flight-cycles after the inspection required by paragraph A. of this AD, and repeat thereafter at intervals not to exceed 250 flight cycles.

3. Prior to each flight on which a fifth engine is to be carried, conduct a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes.

E. Terminating action for this AD consists of any of the following:

1. Determining that the affected flap track bolt holes have adequate cadmium plating and no corrosion as described in paragraph A., of this AD; or

2. Application of cadmium plating to bolt holes where the cadmium plating was found to be inadequate as required by paragraph B., of this AD, or

3. Rework of corroded bolt holes as required by paragraph D., of this AD.

F. If any cracks are found as a result of the inspections required by this AD, within 15 days after discovery, report the following to the Manager of the Seattle Aircraft Certification Office, ANM-100S, 1601 Lind Avenue, SW., Renton, Washington 98055-4056:

1. Size of the crack.
2. Location of the crack.
3. Number of cycles on the airplane.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

This amendment becomes effective March 11, 1991.

Issued in Renton, Washington, on January 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-2618 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-124-AD; Amdt. 39-6885]

Airworthiness Directives; Boeing Model 727-200 and 727-200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727-200 series airplanes, which requires inspection of the fuselage skin under the center engine inlet pedestal housing for cracks, and repair, if necessary. This amendment is prompted by reports of fuselage skin cracks in this area. This condition, if not corrected, could result in rapid depressurization of the cabin.

EFFECTIVE DATE: March 11, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2778. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 727-200 series airplanes, which requires inspection of the fuselage skin under the center engine inlet pedestal housing for cracks, and repair, if necessary, was published in the **Federal Register** on July 10, 1990 (55 FR 28220).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One operator stated that it had inspected 102 of its 125 affected aircraft and had found only one crack, 0.40 inch long. This operator requested that the repetitive inspection interval be increased from 2,500 flight cycles or 18 months to 36 months, since the initial inspection would find large cracks and subsequent inspections at 36-month intervals would only find small cracks. Several other commenters requested an increase in the repetitive inspection interval from 2,500 flight cycles to 3,000 flight cycles; another commenter requested the initial inspection threshold be increased from 2,500 flight cycles to 3,000 flight cycles. These commenters requested the increased intervals so that the inspections would fall during the time of routine scheduled maintenance ("C"-checks). The FAA does not concur with the proposed increases. The inspection threshold and repetitive interval were based on the finding of a 3.5-inch crack on an airplane with only 2,916 flight cycles since manufacture. In light of this, the FAA has determined that the inspection

intervals, as proposed, are both warranted and appropriate.

One commenter stated that repair of a crack in accordance with Boeing Structural Repair Manual (SRM) 53–30–3, Figures 3 or 4, should terminate the repetitive inspections that would be required by proposed paragraph B. The FAA does not concur. The SRM repairs require additional work before they can be considered as terminating action. The rework is currently being developed by the manufacturer and is unavailable at this time. The rework, when available, may be submitted for approval as an alternate means of compliance, in accordance with the provisions of paragraph E. of the AD, to terminate the repetitive inspections.

One commenter stated that it inspects the skin under the center engine inlet pedestal every other "C" check and has found no cracks. Therefore, the commenter does not believe an AD is necessary. The FAA does not concur. Although this operator has not found cracks, three other operators have found cracks between 3.5 inches and 16 inches long. The AD is necessary to ensure that all operators have an inspection program to find cracks and eliminate a potential source of rapid cabin depressurization.

One commenter requested that the rule be changed to allow inspection in accordance with the procedures described in the pertinent service bulletin's original release. The FAA concurs because there have been no changes to the inspection procedures between the original release and Revision 2. Paragraph A. of the final rule has been changed to allow inspection in accordance with Revision 2 or earlier FAA-approved revisions of the service bulletin.

One commenter noted an error in the date of Revision 1 of the service bulletin as reflected in the NPRM. The date has been corrected in the final rule.

For the purpose of clarification, paragraph C. has been changed to specify that the repetitive inspections required by paragraph B. are to continue after the repair.

Since issuance of the NPRM, the FAA has reviewed and approved Boeing Alert Service Bulletin 727–53A0204, Revision 2, dated August 9, 1990, which describes procedures for inspection for cracks and repair, if necessary. Additionally, Revision 2 contains a modification that, if incorporated, terminates the repetitive inspection requirement of this AD. This revision has been included in the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

Ther are approximately 1,250 Model 727–200 and 727–200F series airplanes of the affected design in the worldwide fleet. It is estimated that 1,000 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $240,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 727–200 and 727–200F series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid depressurization of the cabin due to fuselage cracks under the center engine inlet pedestal housing, accomplish the following:

A. Perform a detailed external visual inspection for fuselage skin cracks from body station (BS) 1090 to BS 1110, in accordance with Boeing Alert Service Bulletin 727–53A0204, dated November 22, 1989; Revision 1, dated June 7, 1990; or Revision 2, dated August 9, 1990 (hereafter referred to as the Service Bulletin), within the time specified in subparagraph 1., 2., or 3., below, as applicable.

1. For airplanes identified as Group 1 in the Service Bulletin, inspect within 500 flight cycles or 2 months after the effective date of this AD, whichever occurs first.

2. For airplanes identified as Group 2 in the Service Bulletin, inspect within 1,250 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

3. For airplanes identified as Group 3 in the Service Bulletin, inspect within 2,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

B. Repeat the inspection required by paragraph A. of this AD at intervals not to exceed 2,500 flight cycles or 18 months, whichever occurs first.

C. If fuselage skin cracks are found, prior to further flight, repair in accordance with the Service Bulletin. After repair, continue the repetitive inspections in accordance with paragraph B. of this AD.

D. Modification in accordance with Boeing Drawing 65C35757 or Boeing Alert Service Bulletin 727–53A0204, Revision 2, part III, Accomplishment Instructions, paragraph C, constitutes terminating action for the repetitive inspections required by paragraph B. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane

Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective March 11, 1991.

Issued in Renton, Washington, on January 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-2617 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-278-AD; Amdt 39-6881]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T90-26-51, which was previously made effective as to all known U.S. owners and operators of Boeing Model 767 series airplanes by individual telegrams. This AD requires inspection of the outboard leading edge slat torque tube fittings and replacemnet of the defective fittings if found. This action is prompted by a report of an incident in which failure of the outboard leading edge slat torque tube fitting occurred during climb. This condition, if not corrected, could result in loss of ability to control the position of the affected slat and reduced controllability of the airplane.

DATES: Effective February 19, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T90-26-51, issued December 13, 1990, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2781. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On December 13, 1990, the FAA issued telegraphic AD T90-26-51, applicable to Boeing Model 767 series airplanes, which requires inspection of the outboard leading edge slat torque tube fittings and replacement of the defective fittings if found. Additionally, operators are required to submit a report of discrepancies found to the FAA.

That action was prompted by a report of an incident in which failure of the outboard leading edge slat torque tube fitting occurred during climb. The inspection of the fractured torque tube fittings by the manufacturer revealed that the fitting was not manufactured according to its engineering specification. There also have been several reports of malfunction of the no-back devices in the leading edge drive offset gearboxes due to oil contamination. A leading edge outboard slat torque tube failure during slat actuation, in conjuction with a latent failure of the no-back devices, could result in the leading edge asymmetry. This condition, if not corrected, could result in loss of ability to control the position of the affected slat and reduced controllability of the airplane.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 13, 1990, to all known U.S. owners and operators of Boeing Model 767 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line number 001 through 340, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect defective torque tube fittings in the leading edge slat drive system, accomplish the following:

A. Within the next 20 days after the effective date of this AD, inspect the outboard leading edge slat torque tube fittings in accordance with Boeing Alert Service Bulletin 767-27A0110, dated December 13, 1990.

1. If a defective torque tube fitting is found, prior to further flight, replace the fitting or install a new torque tube assembly in accordance with Boeing Alert Service Bulletin 767-27A0110, dated December 13, 1990.

2. No further action is required if the torque tube fitting is found to have the correct dimensions.

B. Within 10 days after completion of the inspection required by paragraph A. of this AD, submit a report of findings of discrepancies to the Manager, Seattle Manufacturing Inspection District Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; Rapid fax: (206) 227-1181.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective February 19, 1991 as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T90-26-51, issued December 13, 1990, which contained this amendment.

Issued in Renton, Washington, on January 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-2615 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-198-AD; Amdt. 39-6886]

Airworthiness Directives; British Aerospace Model BAe/DH/HS/BH 125 Series Airplanes Equipped With Aircraft Products Company (APC) Warming Oven, Part Number 255B-LH-28/115, 255B-RH-28/115, and 255-362

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe/DH/HS/BH 125 series airplanes equipped with certain APC warming ovens, which requies an inspection to detect damaged wiring or thermostats, and replacement, if necessary; and the installation of an additional thermostat and a new switch to provide additional overheat protection. This amendment is prompted by reports of uncontrolled warming oven temperatures due to inadequate overheat protection. This condition, if not corrected, could result in overheating of the warming over and a resultant fire.

EFFECTIVE DATE: March 11, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to British Aerospace Model BAe/DH/HS/BH 125 series airplanes equipped with certain Aircraft Products Company (APC) warming ovens, which requires an inspection to detect damaged wiring or thermostats, and replacement, if necessary; and the installation of an additional thermostat and a new switch to provide additional overheat protection, was published in the Federal Register on November 2, 1990 (55 FR 46220) and a correction was published in the Federal Register on November 27, 1990 (55 FR 49377).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 420 airplanes of U.S. registery will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts is $150 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $147,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directives:

British Aerospace: Applies to all Model BAe/DH/HS/BH-125 series airplanes, equipped with Aircraft Products Company (ACP) warming ovens having part numbers 255B-LH-28/115, 255B-RH-28/115, or 255-362, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a warming oven fire and to provide additional overheat protection, accomplish the following:

A. Within 60 days after the effective date of this AD, accomplish the following:

1. Inspect the wire insulation inside the warming oven in accordance with British Aerospace Service Bulletin 25-54-9758A&B, Revision 1, dated August 14, 1989. If the oven wiring or thermostat wiring is damaged, prior to further flight, replace the wiring and/or thermostat, as appropriate, in accordance with the service bulletin.

2. Modify the warming ovens by installing an additional thermostat and a new switch, in accordance with British Aerospace Service Bulletin 25-54-9758A&B, Revision 1, dated August 14, 1989.

Note: British Aerospace Service Bulletin 25-54-9758A&B references Aircraft Products Company (APC) Service Bulletins 255B-25-

002, Revision A, dated June 22, 1989, and 255-25-003, dated May 26, 1989, for additional instructions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective March 11, 1991.

Issued in Renton, Washington, on January 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-2616 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ASW-39; Amdt. 39-6879]

Airworthiness Directives; Rogerson Hiller Corporation (Hiller, Fairchild Hiller) Model UH-12E, UH-12E-L, UH-12L, and UH-12L4 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action published in the **Federal Register** and makes effective as to all persons an amendment adopting an airworthiness directive which was previously made effective as to all known U.S. owners and operators of certain Model UH-12E, UH-12E-L, UH-12L, and UH-12L4 series helicopters by individual letters. This AD requires an immediate determination of each tail rotor blade assembly part number and serial number and replacement of affected assemblies. This AD is prompted by reports that the maintenance records for certain life limited tail rotor blade assemblies for these helicopters have been falsified. Operation beyond the approved service life could result in a tail rotor blade failure and, consequently, loss of control of the helicopter.

DATES: Effective March 7, 1991, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 90-15-01, issued July 11, 1990, which contained this amendment.

ADDRESSES: The applicable AD-related material may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Bldg 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Scott F. Romer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2776. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On July 11, 1990, Priority Letter AD 90-15-01 was issued and made effective immediately as to all known U.S. owner and operators of Rogerson Hiller UH-12E, UH-12E-L, UH-12L, and UH-12L4 series helicopters. The AD required an immediate determination of each tail rotor blade assembly part number and serial number and replacement of the affected assemblies before further flight, regardless of the recorded time in service. In addition, if any affected assemblies are found, a report must be sent to the FAA. This action is prompted by the FAA's determination, during a review of Duschak Helicopters International's repair station data, including U.S. Army records, that the records for certain life limited tail rotor blade assemblies for these helicopters have been falsified. Without accurate records it cannot be determined if the service life of the assemblies has been exceeded. Operation beyond the approved service life could result in blade failure and loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters, issued on July 11, 1990, to all known U.S. owners and operators of Rogerson Hiller UH-12E, UH-12E-L, UH-12L, and UH-12L4 series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direrct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of govrnment. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Rogerson Hiller Corporation (Hiller, Fairchild Hiller): Amendment 39-6879. Docket No. 90-ASW-39.

Applicability: All Model UH–12E, UH–12E–L, UH–12L, and UH–12L4 series helicopters, certificated in any category.

Compliance: Required prior to further flight, unless already accomplished.

To prevent failure of a tail rotor blade assembly, which could result in loss of controllability of the helicopter, accomplish the following:

(a) Determine the part number and serial number of the tail rotor blade assemblies installed on the helicopter. The serial number is located on a raised rectangular boss on the barrel section of the blade root fitting.

(b) If any tail rotor blade assembly installed is part number (P/N) 55073 and is identified with any of the serial numbers listed below, regardless of the time in service, remove and replace the blade assembly with an airworthy part before further flight:

Serial Numbers:

3028	3089	9506	9584
9607	10245	10516	10917
13278	14715	14898	15073
15285	15978	16114	20918

Any unairworthy blade assemblies found as a result of this paragraph should be permanently marked as unairworthy.

(c) If any of the tail rotor blade assemblies listed in paragraph (b) of this AD are found, report the helicopter registration number, serial number, and tail rotor blade assembly serial number to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, Transport Airplane Directorate, within 10 days of the inspection required by paragraph (a) of this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) Record compliance with paragraph (b) in the AD compliance record and in the maintenance record of the helicopter log book. This record must include the serial number of any deficient blade assembly found during compliance with this AD.

(f) An alternate means of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

Amendment 39–6879 becomes effective March 7, 1991, as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 90–15–01, issued July 11, 1990, which contained this amendment.

Issued in Fort Worth, Texas, on January 22, 1991.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91–2624 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 90–ASW–6]

Alteration of VOR Federal Airway V–212; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V–212 by adding a dogleg to the north between Navasota, TX, and Lufkin, TX. The airway change improves the flow of traffic in the Houston, TX, terminal area. This action reduces delays and controller workload.

EFFECTIVE DATE: 0901 UTC, April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V–212 by adding a dogleg to the north between Navasota, TX, and Lufkin, TX (55 FR 13285). The airway change improves the flow of traffic in the Houston, TX, terminal area. This action reduces delays and controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The route alignment has been changed by a few degrees to maintan the 15 degrees required for air traffic control separation standards. Except for this change and editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of V–212 by adding a dogleg to the airway between Navasota, TX, and Lufkin, TX. This change improves traffic flow in the Houston terminal area, thereby reducing delays. This action also reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–212 [Amended]

By removing the words "Lufkin, TX;" and substituting the words "INT Navasota 021° and Lufkin, TX, 250° radials; Lufkin;"

Issued in Washington, DC, on January 24, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–2625 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

RIN 0960-AB96

Disability Insurance and Supplemental Security Income; Mental Disorders in Children; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects an amendatory instruction in a final rule concerning mental disorders in children that was published on Wednesday, December 12, 1990.

EFFECTIVE DATE: December 12, 1990.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1759.

In FR Doc. 90-28744 beginning on page 51208 in the issue of Wednesday, December 12, 1990, make the following correction:

PART 404—[CORRECTION]

Appendix 1 to Subpart P—[Corrected]

On page 51230, in the first column, in amendatory instruction 10 for part B of appendix 1 to subpart P to part 404, in the third and fourth lines, remove "of introductory text".

Alan H. Wilder,

Acting Director, Division of Regulations.

[FR Doc. 91-2580 Filed 2-4-91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8321]

RIN 1545-AM50

Withholding Upon Proceeds of Dispositions of U.S. Real Property Interests by Publicly Traded Partnerships, Publicly Traded Trusts and Real Estate Investment Trusts; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to a final regulation which was published in the **Federal Register** for Friday, December 7, 1990 (55 FR 50552). This final regulation relates to the withholding that is required upon the disposition of a U.S. real property interest by publicly traded partnerships, publicly traded trusts, and real estate investment trusts.

FOR FURTHER INFORMATION CONTACT: John F. Dean, (202) 377-9493 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation enables publicly traded partnerships, publicly traded trusts and real estate investment trusts, by meeting certain notice requirements, to shift the responsibility for withholding on proceeds from the disposition of U.S. real property interests to a nominee where such an entity does not make a payment directly to a foreign person.

Need for Correction

As published, the final regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulation which was the subject of FR Doc. 90-28771 is corrected as follows:

On page 50553, column 3, in § 1.1445-8(b)(3)(i), line 2, the language "paragraph (e) of this section)," is corrected to read "paragraph (d) of this section),".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-2631 Filed 2-4-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments cover a wide variety of topics and are primarily in response to changes in the Federal regulations (30 CFR chapter VII) between May 20, 1982 and June 15, 1988 (from the date of conditional approval of the Alabama program through those Federal regulation changes covered by Regulation Reform Review II). In addition, other changes are proposed by the Alabama regulatory authority.

EFFECTIVE DATE: February 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 280 West Valley Avenue, room 302, Homewood, Alabama 35209: telephone (205) 731-0890.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
IV. Procedural Determinations.

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information pertinent to the general background, revisions, modifications, and amendments to the permanent program submission as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, **Federal Register** (47 FR 22030). Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15, and 901.30.

II. Submission of Amendments

Since May 20, 1982 (the date of conditional approval of the Alabama program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Alabama on May 22, 1985, June 9, 1987, and November 28, 1988, that a number of the Alabama regulations are less effective than or inconsistent with the revised Federal requirements.

By letter dated November 22, 1989 (Administrative Record No. AL-446), Alabama submitted to OSM a State program amendment package consisting of approximately 85 revisions to the

Alabama program. These revisions address many of the required changes to the Alabama also proposed additional changes which Alabama believes will further improve the Alabama program.

By letter dated June 13, 1990 (Administrative Record No. AL–455), Alabama submitted to OSM a list of editorial corrections to the original amendments.

OSM announced receipt of the proposed amendments in the December 20, 1989, **Federal Register** (54 FR 52042), and, in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on January 19, 1990.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Alabama program. Only substantive changes will be discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

1. 880–X–2A–.06 Definitions

a. *Administratively complete application.* Alabama proposes a new definition of "administratively complete application." This term is to be used to identify an application that addresses each of the application requirements and contains all information necessary to initiate technical processing and public review. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

b. *Applicant.* Alabama proposes to modify its definition of "applicant" to broaden that term to include any persons seeking a permit revision, permit renewal, or a permit transfer, assignment or sale of permit rights, as well as those persons who are seeking a new permit. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

c. *Bond.* Alabama proposes to repeal its general definition of bond and replace it with a new definition of (1) "collateral bond," and (2) revised definitions of "surety bond" and "self bond."

(1) *Collateral bond* means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the State Regulatory Authority of one or more of the following:

(a) The deposit of cash in one or more federally insured accounts or equivalently protected accounts, payable only to the State Regulatory Authority upon demand;

(b) Negotiable bonds of the United States, the State, or a municipality or other subdivisions of the State, endorsed to the order of, and in the possession of, the State Regulatory Authority;

(c) Negotiable certificates of deposit, payable or assigned to the State Regulatory Authority and in its possession or held in a federally insured bank;

(d) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only upon presentation to the State Regulatory Authority;

(e) A perfected, first-lien security interest in real property in favor of the State Regulatory Authority; or

(f) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the State Regulatory Authority.

(2) *Surety Bond.* Alabama proposes a revised definition for "surety bond." The revised definition provides that a surety bond is an indemnity agreement in a sum certain payable to the Regulatory Authority, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.

(3) *Self bond.* Alabama proposes a revised definition of "self bond." Self bond means an indemnity agreement in a sum certain executed by the applicant or the applicant and any corporate guarantor and made payable to the Regulatory Authority, with or without separate surety.

Since the proposed definitions of "collateral bond," "surety bond," and "self bond" are substantively identical to the Federal definitions at 30 CFR 800.5, the Director finds the proposed definitions to be no less effective than their Federal counterparts at 30 CFR 800.5.

d. *Cemetery.* Alabama proposes to repeal its definition of "cemetery" and replace it with a definition that includes any area of land where human remains are interred. Since the proposed definition is identical to the Federal definition at 30 CFR 761.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 761.5.

e. *Coal mine waste and coal preparation.* Alabama proposes to add new definitions for "coal mine waste," and "coal preparation." "Coal mine waste" is to be defined as coal processing waste and underground development waste. "Coal preparation" is to mean chemical or physical processing and the cleaning, concentrating, or other processing of coal. Since the proposed definitions are identical to the Federal definitions at 30 CFR 701.5, the Director finds the proposed definitions to be no less effective than the Federal definitions in 30 CFR 701.5.

f. *Coal processing plant and coal processing waste.* Alabama proposes to repeal its definitions for "coal processing plant" and "coal processing waste," and replace them with revised definitions of "coal processing plant," and "coal processing waste." The revised definitions more precisely define the extent of the processing and treatment facilities considered to be a part of a coal preparation plant, and provide that all earth materials separated and wasted during the cleaning, concentrating or other processing of coal are coal processing waste. Since the proposed definitions are identical to the Federal definitions at 30 CFR 701.5, the Director finds the proposed definitions to be no less effective than the Federal definitions in 30 CFR 701.5.

g. *Complete and accurate application.* Alabama proposes to repeal its definition of "complete application" and add a new definition of "complete and accurate application." The new definition is to be used to identify applications that have been reviewed by the Commission and have been found to contain all of the information required by the Alabama regulatory program necessary to make a decision on permit issuance. Since the proposed definition is substantively identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

h. *Cumulative impact area.* Alabama proposes to add a new definition of "cumulative impact area." This definition will be used to identify the area within which impacts from a proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

i. *Current assets; Current liabilities; Fixed assets; Liabilities; Net worth; Parent corporation; Tangible net worth.* Alabama proposes to add new definitions for the terms "current assets," "current liabilities," "fixed assets," "liabilities," "net worth," "parent corporation" and "tangible net worth." These definitions are to be used only in connection with a determination of eligibility for self bonding. Since the proposed definitions are substantively identical to the Federal definitions at 30 CFR 800.23, the Director finds the proposed definitions to be no less effective than the Federal definitions in 30 CFR 800.23.

j. *Employee.* Alabama proposes to revise its definition of "employee" to include all members of advisory boards or commissions, and consultants who perform any function or duty under the Act, if they perform decision making functions for the State Regulatory Authority under the State law or regulations. Since the proposed definition is more inclusive than the Federal definition at 30 CFR 705.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 705.5.

k. *Fragile lands.* Alabama proposes a revised definition of "fragile lands." The revised definition includes paleontological sites but removes buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Rule 880-X-7B and the Act. Since the proposed definition is identical to the Federal definition at 30 CFR 762.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 762.5.

l. *Ground cover.* Alabama proposes a new definition of "ground cover." The new definition provides that ground cover means the area covered by combined aerial parts of vegetation and the litter that is produced naturally on the site, expressed as a percentage of the total area of measurement. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

m. *Historic lands.* Alabama proposed a revised definition of "historic lands." The revised definition broadens the term by the inclusion of areas containing scientific resources. Since the proposed definition is identical to the Federal definition at 30 CFR 762.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 762.5.

n. *Impounding structure.* Alabama proposes a new definition of "impounding structure." That term is to be used to identify a dam, embankment, or other structure used to impound water, slurry, or other liquid or semi-liquid material. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

o. *Irreparable damage to the environment.* Alabama proposes a revised definition of "irreparable damage to the environment." The revised definition clarifies that irreparable damage to the environment means damage to the environment, in violation of the Act, the regulatory program, or these regulations, that cannot be corrected by actions of the applicant. Since the proposed definition is substantively identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

p. *Land use.* Alabama proposes revised definitions for "land use" and for the specific land use categories of cropland, pastureland, forestland, grazingland, residential, industrial/commercial, recreation, fish and wildlife habitat, developed water resources, and undeveloped lands or no current use. The revisions conform these definitions to the language to their Federal counterparts. Since the proposed definitions are substantively identical to the Federal definitions at 30 CFR 701.5, the Director finds the proposed definitions to be no less effective than the Federal definitions in 30 CFR 701.5.

q. *Occupied dwelling.* Alabama proposes a revised definition for "occupied dwelling." The revised definition identifies an occupied dwelling as any building that is currently being used on a regular or temporary basis for human habitation. Since the proposed definition is identical to the Federal definition at 30 CFR 761.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 761.5.

r. *Operator.* Alabama proposes a revised definition for "operator." The revised definition identifies an operator as any person who removes or intends to remove more than 250 tons of coal from the earth, or from coal refuse piles, within 12 consecutive calendar months in any one location. Since the proposed definition is substantively identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

s. *Performing any functions or duties under this Act.* Alabama proposes a revised definition of "performing any function or duties under this Act." The revision states that this phrase means making decisions or taking actions, which if performed or not performed by an employee, affect the programs under the Act. Since the proposed definition is identical to the Federal definition at 30 CFR 705.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 705.5.

t. *Permanent impoundment.* Alabama proposes a new definition for "permanent impoundment." The new definition identifies a permanent impoundment as an impoundment which is approved by the Regulatory Authority and, if required, by other State and Federal agencies for retention as part of the postmining land use. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

u. *Previously mined area.* Alabama proposes a new definition for "previously mined area." The new definition provides that this term identifies lands previously mined on which there were no surface coal mining operations subject to the standards of the Act. This definition is substantively identical to the Federal definition at 30 CFR 701.5. However, in the case of *National Wildlife Federation* v. *Lujan*, Nos. 87–1051, 87–1814 and 88–2786 (D.D.C. February 12, 1990), the court addressed two concerns pertaining to the Federal definition. The first was whether "previously mined" means that mining occurred: (1) Before the date Congress enacted SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operation or sites. The court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue" (*National Wildlife Federation*, Mem. Op. at 42, citing to *In re; Permanent Surface Mining Regulation Litigation II. Round I*, No. 79–1144, Mem. Op. (D.D.C. July 6, 1984, 21 Env't Rep. Cas. 1193)). Consequently, the court held that the date of enactment of SMCRA (August 3, 1977) "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured." (*Id.*, Mem. Op. at 50). With respect to the second issue, the court held that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must

be rewritten to make this impossible." (*Id.*, Mem. Op. at 48). Accordingly the court remanded "the definition of previously mined area to the Secretary to correct both of the flaws identified above." (*Id.*, Mem. Op. at 51).

Although OSM has not yet suspended the above definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Alabama's proposed definition. Accordingly, OSM has evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court. Based on the above and the court's remand of the Federal definition of "previously mined area" to "correct both of the flaws identified" in the decision, the Director finds that to the extent that Alabama's proposed definition of "previously mined area" (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977 (the date of enactment of SMCRA), or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed, such definition is less stringent than the general provisions of SMCRA. The Director is, therefore, not approving Alabama's proposed definition of "previously mined area." The Director will, pursuant to 30 CFR 732.17(d), inform Alabama, of regulatory changes needed to amend this definition.

v. *Prime farmland.* Alabama proposes a revised definition for "prime farmland." The revised definition removes the requirement that prime farmland must have a history of use for "intensive agricultural purposes." It replaces this requirement with the requirement that to be considered prime farmland a tract must have a history of use as "cropland." Since the proposed definition is substantively identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

w. *Public building.* Alabama proposes a revised definition for "public building." The revised definition identifies a public building as any structure that is owned or leased, and principally used by a government agency for public business or meetings. Since the proposed definition is identical to the Federal definition at 30 CFR 761.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 761.5.

x. *Public office.* Alabama proposes a new definition for "public office." The new definition identifies a public office as a facility under the direction and control of a government entity which is open to public access on a regular basis during reasonable business hours. Since the proposed definition is identical to the Federal definition at 30 CFR 700.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 700.5.

y. *Publicly-owned park.* Alabama proposes to repeal its definition of "public park" and add a new definition for the term "publicly-owned part." The new definition identifies a publicly-owned park as a public park that is owned by a Federal, State or local government entity. Since the proposed definition is identical to the Federal definition at 30 CFR 761.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 761.5.

z. *Public road.* Alabama proposes a revised definition for "public road." The revised definition identifies a public road as: (1) One that has been designated as public road pursuant to the laws of the jurisdiction in which it is located; and (2) one that is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; and (3) one for which there is a substantial (more than incidental) public use; and (4) one that meets road construction standards for other public roads of the same classification in the local jurisdiction. Since the proposed definition is identical to the Federal definition at 30 CFR 761.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 761.5.

aa. *Refuse pile.* Alabama proposes a new definition for "refuse pile." The new definition provides that a refuse pile is a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid. Since the proposed definition is substantively identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

bb. *Sedimentation pond.* Alabama proposes a revised definition for "sedimentation pond." The revised definition provides that a sedimentation pond is an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

cc. *Soil* horizons. Alabama proposes new definitions for "soil horizons," "A horizon," "E horizon," "B horizon," and "C horizon." Since the proposed definitions are identical to the Federal definitions at 30 CFR 701.5, the Director finds the proposed definitions to be no less effective than the Federal definition in 30 CFR 701.5.

dd. *Substantially disturb.* Alabama proposes a revised definition for "substantially disturb." The revised definition provides that "substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

ee. *Temporary impoundment.* Alabama proposes a new definition for "temporary impoundment." The new definition provides that a temporary impoundment is an impoundment used during surface coal mining and reclamation operations, but not approved by the Regulatory Authority to remain as a part of the approved postmining land use. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

ff. *Topsoil.* Alabama proposed a revised definition for "topsoil." The revised definition provides that topsoil is the A and E soil horizon layer of the four master soil horizons. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

gg. *Transfer, assignment, or sale of permit rights.* Alabama proposes a revised definition for "transfer, assignment, or sale of permit rights." The revised definition provides that a transfer, assignment, or sale of permit rights is a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Regulatory Authority. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the

proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

hh. *Underground development waste.* Alabama proposes a revised definition of "underground development waste." The revised definition provides that underground development waste means waste rock mixtures of coal, shale, claystone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

ii. *Violation notice.* Alabama proposed a revised definition for "violation notice." The revised definition provides that a violation notice is any written notification from a governmental entity of a violation of the law, whether by letter, memorandum, legal or administrative pleading or other written communication. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

jj. *Willful violation.* Alabama proposes a revised definition for "willful violation." The revised definition provides that a willful violation is an act or omission which violates the Act, this Chapter, the applicable program, or any permit condition required by the Act, these regulations, or the applicable program, committed by a person who intends the result which actually occurs. Since the proposed definition is substantively identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition to be no less effective than the Federal definition in 30 CFR 701.5.

2. 880–X–2B–.01 Applicability

Alabama proposes to amend sub-sections (3)(a)(1), (3)(a)(2), and (3)(a)(3) of this section to correct a reference to 880–X–8K–.12 to read 880–X–8K–.10(3)(f). This change is necessary to accurately identify the rule being referenced. Alabama also proposes to modify the text of sub-section (3)(a)(4)(b)(1) to clarify that the exemptions provided in paragraph (3)(a)1 and (3)(a)2 of this rule do not apply to the requirements for existing and new coal mine disposal facilities. The Director finds the proposed amendment to be substantively identical to and therefore no less effective than the comparable portions of the Federal regulations at 30 CFR 701.11.

3. 800–X–7B–.07 Procedures

Alabama proposes to amend this rule by adding language to conform it to the language of the Federal regulations at 30 CFR 761.12. The new language clarifies the procedures to be followed when a complete application for a surface coal mining and reclamation operation permit is received. The proposed amendment includes the following revisions:

a. Sub-section (2) is revised by the asddition of new language in paragraph (b) to require that the National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The ASMC, upon request by the appropriate agency, shall grant an extension to the 30 day period of an additional 30 days. If no response is received within the 30 day period or within the extended period granted, the ASMC may make the necessary determination based on the information it has available. The additional language added to 880–X–7B–.07(2)(b) makes this paragraph substantively identical to the Federal regulations at 30 CFR 761.12(b)(2).

b. Sub-section (4), relating to operations to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road, or the relocation of a public road, is changed to adopt procedural requirements that are substantively identical to the Federal regulations at 30 CFR 761.12(d). The overall effect of the change is that the regulatory authority, not the permit applicant, is responsible for providing an opportunity for a public hearing and for publishing the newspaper notice if a hearing is requested. The subsection does not apply these procedural requirements to the closing of a public road as does the Federal regulation at 30 CFR 761.12(d).

Although Alabama does not specifically state that the closure of public roads is subject to the provisions of this section, it applies the State statute at sections 23–4–1 through 23–4–6 of the Code of Alabama which provides for the closure of roads in a manner substantively identical to that at the Federal regulations at 30 CFR 761.12(d).

The State statute requires that the notice of hearing be published in a newspaper in the county in which the road is located. The Federal regulation at 30 CFR 761.12(d)(3) requires that the notice be published in a newspaper of general circulation in the affected locale. By letter dated September 11, 1990, Alabama stated that it interprets the State rule to require, at a minimum, that the newspaper by one of general circulation in the county such that any affected person will have an opportunity to see said notice (Administrative Record No. AL–470).

The proposed change also requires the regulatory authority to make a written finding within 30 days of either the close of the public comment period or the close of the public hearing. Further, no mining is to be allowed within the 100 foot limit unless the ASMC or the public road authority determines that the public and the affected landowners will be protected.

c. Sub-section (5), relating to proposed surface coal mining within 300 feet of any occupied dwelling, is revised to provide that the permit applicant shall submit with the application a written waiver by lease, deed, or other document of conveyance from the owner of the dwelling, clarifying that the owner and the signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the swelling as specified. Where the applicant, for a permit after August 3, 1977, had obtained the valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required. Where the applicant for a permit after August 3, 1977, has obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser shall be deemed to have had constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if mining has proceeded to within the 300 foot limit prior to the date of purchase.

d. Sub-section (6) is revised at paragraph (a) to provide that where the Regulatory Authority determines that the proposed surface coal mining operations will adversely affect any publicly owned park or any places included in the National Register of Historic Places, the Regulatory Authority shall transmit to the Federal, State or local agencies with legal jurisdiction over or a statutory or regulatory responsibility for the park or historic place, a copy of the applicable parts of the permit application containing the following: (1) A request for the agency with legal jurisdiction to

approve or disapprove of the operations; and, (2) A notice to the appropriate agency with legal jurisdiction that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The ASMC may, upon request by the appropriate agency, grant an extension to the 30 day period of an additional 30 days. Failure to interpose an objection within the 30 days or the extended period granted shall constitute approval of the proposed permit.

e. Sub-section (8) is revised to correct the grammar of the sub-section without changing the meaning. Since the proposed amendments (a through e above) to section 800–X–7B–.07 render it substantively identical to the Federal regulations at 30 CFR 761.12, the Director finds the amendments to be no less effective than the Federal regulation at 30 CFR 761.12.

4. 800–X–7D–.10 Public Information

Alabama proposes to amend this rule by adding language at 800–X–7D–.10(a) to clarify that specific information relating to the location of properties proposed to be nominated to, or listed in the National Register of Historic Places, need not be disclosed if ASMC determines that the disclosure of such information would create a risk of destruction or harm to such properties. Since the proposed amendment is identical to the Federal rule at 30 CFR 764.23(a), the Director finds the proposed amendment to be no less effective than the Federal regulation at 30 CFR 764.23(a).

5. 880–X–8A–.07 Coordination with Requirements Under Other Laws

Alabama proposes to amend this rule at paragraph (c) by adding the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); The Bald Eagle Protection Act, as amended (16 U.S.C. 668(a)); and Executive Order 11593 to the list of laws for which the State Regulatory Authority must provide coordination of review and issuance of permits. Since the proposed amendment is substantively identical to the Federal rule at 30 CFR 773.12, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.12.

6. 880–X–8B–.06 Permit Applications—General Requirements for Format and Content

Alabama proposes to add a new paragraph (d) to sub-section (3) of this rule to require that technical analyses included in the technical data submitted as a part of the permit application be planned by or under the direction of a professional qualified in the subject to be analyzed. The proposed amendment is identical to the Federal rule at 30 CFR 777.13(b). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 777.13(b).

7. 880–X–8C–.08 Coal Exploration Compliance Duties

Alabama proposes to revise the language of this rule to conform it to the language of the Federal regulations at 30 CFR 772.13. Sub-section (1) is revised to remove the minimum size tests for areas to which this rule applies and replace them with a test of "substantially disturb the natural land surface." Sub-section (2) is revised to provide that any person who conducts coal exploration operations in violation of the provisions of this chapter, subchapter 880–X–10B, or any exploration permit term or condition imposed by ASMC, shall be subject to the provisions of section 26 of the Act, and chapter 880–X–11. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 772.13.

8. 880–X–8D–.08 and 880–X–8G–.08 Relationship to Areas Designated Unsuitable for Mining

Alabama proposes to amend these regulations at sub-section (1) to provide that each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining and reclamation operations, rather than for surface/underground mining activities. Alabama also proposes to correct a reference to rule 880–X–8K–.11(d)(2) in sub-section (2) of these rules to read 880–X–7C–.05. The amendment renders the Alabama rules substantively identical to the Federal rules at 30 CFR 778.16. Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulation at 30 CFR 778.16.

9. 880–X–8D–.14. and 880–X–8G–.14 Facilities or Structures Used in Common

Alabama proposes to add a new rule to require that the plans of a facility or structure to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other application. Each permittee shall bond the facility or structure unless some other agreement acceptable to all parties is reached and that agreement is included in the permit application. The agreement must demonstrate to the satisfaction of the Regulatory Authority that all responsibilities under this chapter for the facility or structure will be met. The proposed amendment is identical to the Federal regulation at 30 CFR 778.22. The Director finds the proposed amendment to be no less effective than the Federal regulation at 30 CFR 778.22.

10. 880–X–8E–.05 and 880–X–8H–.05 Cultural, Historical and Archaeological Resources Information

Alabama proposes to amend sub-section (1) of this rule by adding language to clarify that each permit application shall describe and identify the nature of cultural and historic resources eligible for listing on the National Register of Historic Places as well as cultural and historic resources that are listed. Alabama also proposes to add a new sub-section (2) to this rule to allow the Regulatory Authority the option of requiring the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through the collection of additional information, the conduct of field investigations, or other appropriate analyses. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 779.12, and 30 CFR 783.12. The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 779.12, and 30 CFR 783.12.

11. 880–X–8E–.06 and 880–X–8H–.06 Description of Geology and Hydrology and Determination of the Probable Hydrologic Consequences

Alabama proposes to repeal the language of the present rules and replace it with the language of the Federal rules at 30 CFR 780.21, 30 CFR 780.22, 30 CFR 784.14, and 30 CFR 784.22. The proposed amendments eliminate numerous inconsistencies with the Federal rules relating to the collection, reporting, and monitoring of hydrologic and geologic data. Although Alabama uses the word "operation" in subsections (1)(f)1 and (1)(e)1 instead of the Federal term "permit," Alabama in a letter dated December 18, 1990, stated it interprets "operation" to mean "permit" as used in the corresponding Federal rules (Administrative Record No. AL–471). In the same letter, Alabama also stated that it interprets its rules to require that the probable hydrologic consequences determination address all proposed mining activities associated with the permit area for which authorization is sought, not just those expected to occur during the term of the permit. Since the proposed amendments

are substantively identical to the Federal rules at 30 CFR 780.21, 30 CFR 780.22, 30 CFR 784.14 and 30 CFR 784.22, the Director finds the proposed amendments to be no less effective than the Federal rules at 30 CFR 780.21, 30 CFR 780.22, 30 CFR 784.14, and 30 CFR 784.22.

12. 880–X–8E–.10 and 880–X–8H–.10 Prime Farmland Investigation

Alabama proposes to repeal its current rules on prime farmland investigations and replace them with new rules. The proposed rules, when read in combination with proposed 880–X–8J–08(3), respond to all of the Federal application requirements at 30 CFR 785.17(b) for reconnaissance inspections.

The Federal rules at 30 CFR 785.17(b)(1) require that, "all permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists." The nature and extent of that inspection is to be determined by the Regulatory Authority in consultation with the U.S. Soil Conservation Service. Alabama's proposed amendments at 880–X–8E–.10 and 880–X–8H–.10 require the applicant to conduct a pre-application investigation, "if no soil survey exists for the site," and relies on existing soil surveys for prime farmland information where soil surveys exist. Section 880–X–8J–08(3) provides for the required determination of the nature and extent of the inspection by the Regulatory Authority in consultation with the Soil Conservation Service.

The Federal regulations at 30 CFR 785.17(b)(2) require that if the reconnaissance inspection reveals that no prime farmland is present, the applicant must submit a statement to that effect and provide the basis on which that conclusion was reached. The Alabama proposed amendments require at 880–X–8E–.10(2) and 880–X–8H–.10(2) that the applicant request a negative determination from the State Regulatory Authority.

The Federal regulations at 30 CFR 785.17(b)(3) require that if the reconnaissance inspection indicates that the land within the proposed permit may be prime farmland historically used for cropland, the applicant shall determine if a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant shall have one made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. This rule also specifies the rules that apply if prime farmlands are found to be present, or if they are not found to be present. Alabama's proposed amendments provide at 880–X–8E–.10(b) and 880–X–8H–.10(b) that if no soil survey exists and the on-site investigation indicates that prime farmland soils may exist on the permit area the applicant shall cause a soil survey to be made. The Director finds when read in combination with the proposed amendment at 880–X–8J–.08(3), these proposed amendments are found to be no less effective than the Federal regulations at 30 CFR 785.17(b).

13. 880–X–8E–.11 and 880–X–8H–.11 Fish and Wildlife Informaiton

Alabama proposes to add new rules to require the applicant to submit fish and wildlife resource information for the permit area and adjacent area as a part of the permit application package. The scope and level of detail for such information shall be determined by the regulatory authority in consultation with the State and Federal agencies with responsibility for fish and wildlife and shall be sufficient to design the protection and enhancement plan required. The proposed amendment is identical to the Federal rules at 30 CFR 780.16(a) and 30 CFR 784.21(a). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 780.16(a) and 30 CFR 784.21(a).

14. 880–X–8F–.08 and 880–X–8I–.07 Operation Plan: Permit Map(s)

Alabama proposes to amend this rule by adding to its requirements at sub-section (1), paragraph (g). The amendment requires that the permit map show the boundaries of any public park and locations of any cultural or historic resources listed on or eligible for listing on the National Register of Historic Places. The Federal regulations at 30 CFR 779.24(i) require this information be shown on the permit maps. Alabama also proposes to amend sub-section (1), paragraph (h) to require that the permit map show all areas where human bodies are interred, including public or private cemeteries, and Indian burial grounds, that are located in or within 100 feet of the proposed permit area. The Federal regulations require at 30 CFR 779.24(j) that each cemetery located within 100 feet of the proposed permit area be shown on the permit map, and at 30 CFR 761.5 the term cemetery is defined to include any area where human bodies are interred. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 779.24 (i) and (j).

15. 880–X–8F–.14 and 880–X–8I–.14 Protection of Public Parks and Historic Places

Alabama proposes to amend these rules by removing the text of the original rules and replacing it with new text that is identical to the text of the Federal regulations at 30 CFR 780.31 and 30 CFR 784.17. The amendment provides that each plan shall describe the measures to be used to protect any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 780.31(a) and 30 CFR 784.17(a).

16. 880–X–8F–.18 and 880–X–8I–.18 Fish and Wildlife Protection and Enhancement

Alabama proposes to add a new rule requiring a description of how the operator plans to minimize the disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. The description must be consistent with other requirements of this chapter, apply at a minimum to species and habitats identified in the Fish and Wildlife information section of the application and include protective and enhancement measures. It may include such protective measures as the use of buffer zones, the selective location and special design of haul roads and power lines and the monitoring of surface water quality and quantity. It may also include such enhancement measures as the restoration of streams or wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food or cover and the replacement of perches and nest boxes. This information is subject to review by the U.S. Fish and Wildlife Service upon request. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 780.16 (b) and (c); and 30 CFR 784.21 (b) and (c). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 780.16 (b) and (c); and 30 CFR 784.21 (b) and (c).

17. 880–X–8I–.10 Subsidence Control Plan

Alabama proposes to repeal its present rule on subsidence control plans and replace it with a new rule. The new

rule requires that the permit application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. The proposed rule specifies the actions that must be taken by the applicant if the survey shows that no structures or renewable resource lands are present. It also specified the information that an applicant must include in his permit application if these features are present and the survey shows that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the Regulatory Authority determines that such material damage or diminution could occur. The proposed amendment is identical to the Federal regulations at 30 CFR 784.20. However, in the case of *National Wildlife Federation* v. *Lujan*, Nos. 87–1051, 87–1814 and 88–2788 (D.D.C. February 12, 1990), the court remanded 30 CFR 817.121(c)(2) which uses language essentially identical to the language of this section. The Director believes the phrase "to the extent required under State law" is similarly invalid in this rule and that any proposed State rule equivalent must be disapproved. An applicant's subsidence control plan must be prepared without regard to the liability limitations of State law. Based on the court's remand of similar language in 30 CFR 817.121(c)(2), the Director is not approving the proposed amendment. The Director will, according to 30 CFR 732.17(d), inform Alabama of the required regulatory changes needed to correct this deficiency. The Director finds the proposed amendment to be less effective than the Federal regulations at 30 CFR 784.20.

18. 880–X–8J–.04 Experimental Practices Mining

Alabama proposes to amend this rule at sub-section (5) paragraph (a) by adding a requirement that a permit application for an experimental practice shall contain appropriate descriptions, maps, plans, and data which show the nature of the experimental practice including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted. The proposed amendment modifies the requirements at paragraph (b)(2), to include a showing of how the use of the experimental practice allows a post-mining land use for industrial, commercial, residential or public use on an experimental basis. The permit application requirements are further modified at sub-section (5) paragraph (e) to require that the monitoring program shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the Regulatory Authority and the Director of OSM to evaluate the effectiveness of the experimental practice and to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the experimental practice during and after mining. This rule is further amended at sub-section (8) by the addition of language to provide that no permit authorizing an experimental practice shall be issued until the Regulatory Authority first finds in writing and the Director of OSM then concurs that the experimental practice meets all of the requirements of paragraphs (5)(b) through (5)(e) of this rule, that the experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved, and that the permit contains conditions which specifically limit the experimental practice, impose enforceable alternative environmental protection requirements and require the person to conduct periodic monitoring, recording and reporting in accordance with a program set forth in the application and additional requirements as the State Regulatory Authority and the Director of OSM may require to ensure the protection of the public health and safety and the environment. An additional revision of this rule at sub-section (9) provides that each permit that authorizes the use of an experimental practice shall be reviewed in its entirety by the Regulatory Authority at a frequency set forth in the approved permit, but no less frequently than every two and one-half years. The proposed amendment renders this rule substantively identical to the Federal regulations at 30 CFR 785.13. Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 785.13.

19. 880–X–8J–.08 Soils and Prime Farmlands

a. Alabama proposes to amend its rule on soils and prime farmlands by updating the text of sub-section (1), paragraphs (a), (b) and (c) to provide that this rule does not apply to lands on which surface coal mining and reclamation operations are conducted pursuant to permits issued prior to August 3, 1977, or to any revisions or renewals of permits issued prior to that date, or to any lands included in existing surface mining operations for which a permit was issued prior to August 3, 1977. To be considered as lands included in an existing operation for which a permit was issued prior to August 3, 1977, such lands must be a part of a single continuous surface coal mining operation begun under a permit issued prior to that date, the permittee must have had a legal right to mine the lands prior to that date through ownership, contract, or lease, and the lands must contain a part of a continuous recoverable coal seam that was mined in a single continuous mining pit (or multiple pits) begun under a permit issued prior to August 3, 1977. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 785.17(a) (1) through (3). Therefore, the Director finds the proposed amendment to be no less effective than the Federal rule at 30 CFR 785.17 (a)(1) through (a)(3).

b. Alabama proposes to amend this rule at sub-section (1), paragraph (d) by the addition of definitions for the terms "renewal" and "revision" of a permit as those terms are used in this section. A renewal of a permit is defined as a decision by the State Regulatory Authority to extend the time by which the permittee may complete mining within the boundaries of the original permit. A revision of a permit is defined as a decision by the State Regulatory Authority to allow changes in the method of mining operations within the original permit area, or a decision by the State Regulatory Authority to allow incidental boundary changes to the original permit, or an amendment to a permit issued under the Surface Mining Control and Reclamation Act of 1975. The concept of a permit amendment is not included in the Federal regulations. A permit is either revised or a new permit is sought. However, the cited Alabama Surface Mining and Reclamation Act of 1975 was repealed on May 6, 1981, and is no longer applicable, therefore, any reference to permits issued under this act is superfluous. The Director finds the proposed amendment to be substantively identical to the Federal regulations at 30 CFR 785.17(a)(4)(i) and therefore no less effective than the Federal regulations at 30 CFR 785.17(a)(4)(i).

c. Alabama proposes to revise this rule at sub-section (2) to clarify the application content for a prime farmland permit. The amendment describes the content of a required plan for mining and restoration of the prime farmland, including a soil survey of the permit area, a plan for soil reconstruction,

replacement and stabilization, scientific data, and data on soil productivity prior to mining. The language of the proposed amendment is substantively identical to the Federal regulations at 30 CFR 785.17(c). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 785.17(c).

d. Alabama proposes to amend this rule at sub-section (3) by repealing the present language and replacing it with new language to clarify the requirement for consultation between the State Regulatory Authority and the State Conservationist in determining the nature and extent of any required on-site preapplication investigation, and for the coordination of review of soil reconstruction plans prior to issuance of any permit that includes prime farmlands. The Federal regulations at 30 CFR 785.17(d) require the Regulatory Authority to consult with the Secretary of Agriculture, through the State Conservationist, where prime farmlands are involved. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 785.17(d). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 785.17(d).

e. The proposed amendment contains no provision comparable to the Federal regulation at 30 CFR 785.17(e)(5) that provides that the aggregated total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained. Since the proposed amendment contains no comparable provisions, the Director finds, in this respect, the proposed amendment is less effective than the Federal regulations at 30 CFR 785.17(e)(5) and will require Alabama to amend its program to include a comparable provision.

20. 880–X–8K–.05 Public Notices of Filing of Permit Applications

Alabama proposes to repeal its present rule and replace it with a new rule entitled, "Public Participation in Permit Processing." This new rule addresses the requirements for filing a permit application, providing public notice of the filing, the required public comment period and the filing of written objections, the procedures for informal conferences, and the public availability of permit applications. Although Alabama does not specifically state that the closure of public roads is subject to the provisions of this section, it applies the State statute at section 23–4–2 of the Code of Alabama which provides for the closure of roads in compliance with the Federal regulations at 30 CFR 773.13 (Administrative Record No. AL–470). Since the proposed new rule is substantively identical to the Federal regulations at 30 CFR 773.13, the Director finds the proposed rule to be no less effective than the Federal regulations at 30 CFR 773.13.

21. 880–X–8K–.06 Opportunity for Submission of Public Comments on Permit Applications

Alabama proposes to repeal this rule since its provisions are now included in 880–X–8K–.05, "Public Participation in Permit Processing." The Director finds that the transfer of this regulation to 880–X–8K–.05 does not render the Alabama program less effective than the Federal regulations at 30 CFR 773.13.

22. 880–X–8K–.07 Right to File Written Objections

Alabama proposes to repeal this rule since its provisions are now included in 880–X–8K–.05, "Public Participation in Permit Processing." The Director finds that the transfer of this regulation to 880–X–8K–.05 does not render the Alabama program less effective than the Federal regulations at 30 CFR 773.13.

23. 880–X–8K–.08 Informal Conferences

Alabama proposes to repeal this rule since its provisions are now included in 880–X–8K–.05, "Public Participation in Permit Processing." The Director finds that the transfer of this regulation to 880–X–8K–.05 does not render the Alabama program less effective than the Federal regulations at 30 CFR 773.13.

24. 880–X–8–.09 Public Availability of Information in Permit Applications on File With the State Regulatory Authority

Alabama proposes to repeal this rule since its provisions are now included in 880–X–8K–.05, "Public Participation in Permit Processing." The Director finds that the transfer of this regulation to 880–X–8K–.05 does not render the Alabama program less effective than the Federal regulations at 30 CFR 773.13.

25. 880–X–8K–.10 Review of Permit Applications

a. Alabama proposes to repeal this rule and replace it with a new 880–X–8K–.10. The proposed new rule addresses the general requirements for permit application review and approval, and lists the written findings required to be made by the Regulatory Authority before a permit application is approved. The proposed rule is substantively identical to the Federal regulations at 30 CFR 773.15 prior to the revision of that regulation on April 3, 1989. However, the proposed rule does not contain all of the provisions of the revised Federal regulation. To be no less effective than the revised Federal regulation, the Alabama rule at subsection (2)(a) must be amended to add, at sub-section (2) paragraph (a), a prohibition of the unconditional issuance of a permit where any person who owns or controls the applicant is currently in violation of SMCRA, any State or Federal laws, rules or regulations pertaining to air or water environmental protection, or where any of the parties listed above owe delinquent civil penalties or abandoned mine land reclamation (AMLR) fees, or where they have forfeited bond and the underlying violations have not been corrected. The Federal regulation, as revised on April 3, 1989, also establishes the conditions under which a violation may be presumed to be corrected to the satisfaction of the agency with jurisdiction over the violation. To be no less effective than the Federal regulations at 30 CFR 773.15, the Alabama rule at subsection (2)(a) must be amended to include this provision. The Director finds the proposed amendment to be less effective than the Federal regulations at 30 CFR 773.15.

b. The Federal regulation at 30 CFR 773.15(b)(2), as revised on April 3, 1989, requires that any permit issued in a situation where a person is in the process of either correcting or appealing an outstanding violation shall be issued solely on a conditional basis. To be no less effective than the Federal regulation at 30 CFR 773.15(b)(2), the Alabama rule must be amended to include this requirement. The Director finds the proposed amendment to be less effective than the Federal regulation at 30 CFR 773.15(b)(2).

c. The Federal rule at 30 CFR 773.15(b)(3), as revised on April 3, 1989, extends the prohibition on permit issuance to situations where the operator specified in the application or anyone who owns or controls the applicant, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of such a nature and duration as to indicate an intent not to comply with the program. To be no less effective than the Federal regulation at 30 CFR 773.15(b)(3), the Alabama rule

must be amended to include this requirement. The Director finds the proposed amendment to be less effective than the Federal regulations at 30 CFR 773.15(b)(3).

26. 880–X–8K–.11 Criteria for Permit Approval or Denial

Alabama proposes to repeal existing 880–X–8K–.11 and replace it with a new rule entitled "Permit Conditions." The new rule lists those conditions that apply to each permit issued by the regulatory authority. The proposed amendment is identical to the Federal regulations at 30 CFR 773.17 (a) through (g) but fails to include the provisions of 30 CFR 773.17 (h) and (i). The Director finds the proposed amendment to be no less effective than the corresponding Federal Regulations at 30 CFR 773.17 (a) through (g). The Federal rule at 30 CFR 773.17(h) is currently being revised. The Director will not require Alabama to revise their corresponding rule until revision of the Federal rule is completed. The Federal rule at 30 CFR 773.17(i) requires that in the absence of a stay, within 30 days after issuance of a cessation order for operations conducted under the permit, the permittee notify the regulatory authority of any changes that have occurred in the ownership and control information submitted at the time of application or since the submittal of the last update of this information. If no change has occurred, the permittee must submit a statement to that effect. To be no less effective than the Federal regulations at 30 CFR 773.17(i), the Alabama rule must be amended to include a similar condition. To this extent, the Director finds the proposed amendment to be less effective than the Federal regulations at 30 CFR 773.17(i) and he will require Alabama to amend that rule.

27. 880–X–8K–.12 Criteria for Permit Approval or Denial; Existing Structures

Alabama proposes to repeal existing 880–X–8K–.12 and replace it with a new rule entitled "Permit Issuance and Right of Renewal." The proposed new rule is identical to the Federal regulations at 30 CFR 773.19 except that it also incorporates the provisions that are substantively identical to 30 CFR 778.17(b) for permit terms longer than 5 years. The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 773.19 and 30 CFR 778.17.

28. 880–X–8K–.13 Permit Approval or Denial Actions

Alabama proposes to repeal existing 880–X–8K–.13. It is no longer needed since its requirements have been incorporated into 880–X–8K–.10, 880–X–8K–.11, and 880–X–8K–.12. The Director finds that the transfer of these provisions to 880–X–8K–.10, –.11, and –.12 does not render the Alabama program less effective than the Federal regulations 30 CFR 773.15 through 30 CFR 773.19.

29. 880–X–8K–.14 Permit Terms

Alabama proposes to repeal existing 880–X–8K–.14. It is no longer needed since its requirements have been incorporated into 880–X–8K–.10, 880–X–8K–.11, and 880–X–8K–.12. The Director finds that the transfer of these provisions to 880–X–8K–.10, –.11, and –.12 does not render the Alabama program less effective than the Federal regulations 30 CFR 773.15 through 30 CFR 773.19.

30. 880–X–8K–.15 Conditions of Permits: General and Right of Entry

Alabama proposes to repeal existing 880–X–8K–.15. It is no longer needed since its requirements have been incorporated into 880–X–8K–.10, 880–X–8K–.11, and 880–X–8K–.12. The Director finds that the transfer of these provisions to 880–X–8K–.10, –.11, and –.12. does not render the Alabama program less effective than the Federal regulations 30 CFR 773.15 through 30 CFR 773.19.

31. 880–X–8K–.16 Conditions of Permits: Environment, Public Health, and Safety

Alabama proposes to repeal existing 880–X–8K–.16. It is no longer needed since its requirements have been incorporated into 880–X–8K–.10, 880–X–8K–.11, and 880–X–8K–.12. The Director finds that the transfer of these provisions to 880–X–8K–.10, –.11, and –.12 does not render the Alabama program less effective than the Federal regulations 30 CFR 773.15 through 30 CFR 773.19.

32. 880–X–8M–.07 Permit Renewals; General Requirements: 880–X–8M–.08; Applications: 880–X–8M–.09; Terms: and 880–X–8M–.10; Approval or Denial

Alabama proposes to repeal each of these existing rules and to replace them with a one new rule to address permit renewals. The new rule at 880–X–8M–.07 entitled "Permit Renewals" provides that a valid permit, issued pursuant to an approved regulatory program carries with it the right of successive renewal within the boundaries of the existing permit, upon expiration of the permit term, and provides application requirements and procedures for renewal. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 774.15. Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulation at 30 CFR 774.15.

33. 880–X–8M–.11 Transfer, Assignment, or Sale of Permit Rights; General Requirements; 880–X–8M–.12 Transfer, Assignment, or Sale of Permit Rights; Obtaining Approval

Alabama proposes to repeal existing 880–X–8M–.11, and existing 880–X–8M–.12 and to replace them with one new rule, 880–X–8M–.11, entitled "Transfer, Assignment, or Sale of Permit Rights." The new rule provides that no transfer, assignment, or sale of rights assigned under a permit shall be made without the prior written approval of the Regulatory Authority. It also provides application requirements, and guidance for public participation, criteria for approval, notification, and continued operation under an existing permit. The proposed rule is identical to the Federal regulations at 30 CFR 774.17. Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulation at 30 CFR 774.17.

34. 880–X–10B–.04 General Responsibilities of Persons Conducting other Coal Exploration

Alabama proposes to amend its current rule by removing the word "substantially" from the phrase "substantially disturbs" used to describe coal exploration operations and by making other minor changes which do not affect the intent of the rule. Since there is no Federal counterpart to this rule and it does not detract from the operation of other relevant rules, the Director finds the proposed amendment to be no less effective than the Federal regulations.

35. 880–X–10B–.05 Required Documents

Alabama proposes to amend this rule to provide that each person who conducts coal exploration which substantially disturbs the natural land surface shall, while in the exploration area, have available a copy of the filed notice of intention to explore or a copy of the exploration permit for review by the Alabama Surface Mining Commission inspector upon request. The proposed amendment is identical to the Federal regulation at 30 CFR 815.13. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 815.13.

36.800–X–10B–.06 Performance Standards for Coal Exploration

Alabama proposes to amend this rule by removing all of the present language that does not conform to 30 CFR 815.15, its Federal counterpart, and redesignating the subsections of this rule. The proposed amendment adds a new sub-section (a) to provide that habitats of unique or unusually high value for fish, wildlife or other related environmental values and critical habitats of threatened or endangered species identified pursuant to the endangered species act of 1973 shall not be disturbed during coal exploration. It also adds a new sub-section (b) to provide that all roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of ASMC rules 880–X–10C–.67 through 880–X–10C–.72. The proposed amendment provides at new sub-section (d) that topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the ASMC. At new sub-section (f) the proposed amendment specifies that diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with rules 880–X–10C–.14 or 880–X–10D–.14 of these rules. The Director finds the proposed amendment to be no less effective than the Federal regulations, with one exception. At 880–X–10B–.06(d) Alabama has not provided that topsoil shall be "separately" removed, stored, and redistributed as is specified in the Federal rules at 30 CFR 815.15(d). And, while 880–X–10B–.01 allows the Regulatory Authority to apply the general performance standards of 880–X–10C–.08 "at its discretion," there is no assurance that will be routinely done. The Director finds the proposed amendment at 880–X–10B–.06(d) to be less effective than the Federal regulations at 30 CFR 815.15(d).

37. 880–X–10C–.08 and 800–X–10D–.08 Topsoil: Removal

Alabama proposes to amend these rules by conforming their language to the language of the Federal rules at 30 CFR 816.22 and 30 CFR 817.22. Since the amended rules are substantively identical to the Federal rules at 30 CFR 816.22 and 30 CFR 817.22, the Director finds the amendments to be no less effective than the Federal rules.

38. 880–X–10C–.12 and 880–X–10D–.12 Hydrologic Balance Protection

Alabama proposes to repeal its present rules and replace them with new rules whose language is substantively identical to the language of the Federal regulations at 30 CFR 816.41 and 30 CFR 817.41. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.41 and 30 CFR 817.41.

39. 880–X–10C–.14 and 880–X–10D–.14 Diversions

Alabama proposes to repeal its present rules and replace them with new rules whose language is substantively identical to the language of the Federal regulations at 30 CFR 816.43 and 30 CFR 817.43. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.43 and 30 CFR 817.43.

40. 880–X–10C–.24 and 880–X–10D–.23 Hydrologic Balance: Transfer of Wells

Alabama proposes to repeal these rules since the subject they address is now covered by new regulations 880–X–10C–.12 and 880–X–10D–.12. Since the subjects previously addressed by these sub-sections are adequately covered by new sections 880–X–10c–.12 and 880–x–10D–.12, the Director finds the proposed amendments to repeal these does not alter the status of the Alabama program. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.41(g) and 30 CFR 817.41(g).

41. 880–X–10C–.26 and 880–X–10D–.24 Hydrologic Balance: Discharge of Water into an Underground Mine

Alabama proposes to repeal these rules since the subject they address is now covered by new regulations 880–X–10C–.14 and 880–X–10D–.14. Since the subjects previously addressed by these subsections are adequately covered by new sections 880–X–10C–.14 and 880–X–10D–.14, the Director finds the proposed amendments to repeal does not alter the status of the Alabama program. The Director finds the proposed amendments to be less effective than the Federal regulations at 30 CFR 816.43 and 30 CFR 817.43.

42. 880–X–10C–.28 and 880–X–10D–.26 Hydrologic Balance: Stream Buffer Zones

Alabama proposes to repeal these rules and replace them with new rules whose language is identical to the language of the Federal regulations at 30 CFR 816.57 and 30 CFR 817.57. Since the proposed amendments are substantively identical to the Federal regulations at 30 CFR 816.57 and 30 CFR 817.57, the Director finds the proposed amendments to be no less effective than the Federal regulation at 30 CFR 816.57 and 30 CFR 817.57.

43. 880–X–10C–.37 Protection of Underground Mining

Alabama proposes to amend this rule to provide that the nature, timing, and sequence of the activities proposed to be conducted within 500 feet of an active underground mine may not be conducted unless jointly approved by the State Regulatory Authority, MSHA, and the Alabama Department of Industrial Relations. The language of the proposed amendment is substantively identical to the language of the Federal regulations at 30 CFR 816.79. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 816.79.

44. 880–X–10C–.38 and 880–X–10D–.34 Coal Processing Waste Banks: General Requirements

Alabama proposes to repeal these rules and replace them with new rules entitled "Coal Mine Waste: General Requirements." The new rules are substantively identical to the Federal regulations at 30 CFR 816.81 and 30 CFR 817.81. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.81 and 30 CFR 817.81.

45. 880–X–10C–.39 and 880–X–10D–.35 Coal Processing Waste Banks: Site Inspection

Alabama proposes to repeal these rules since the requirements for site inspections are now covered by new rule 800–X–10C–.40 and 880–X–10D–.36. Since the subjects previously addressed by these subsections are adequately coverd by new 880–X–10C–.40 and 880–X–10D–.36, the Director finds the amendments do not alter the effectiveness of the Alabama program. The Director finds the amendments to be no less effective than the Federal regulations at 30 CFR 816.83(d) and 30 CFR 817.83(d).

46. 880–X–10C–.40 and 880–X–10D–.36 Coal Processing Waste Banks: Water Control Measures

Alabama proposes to repeal these rules and replace them with new rules 880–X–10C–.40 and 880–X–10D–.36 entitled "Coal Mine Waste: Refuse Piles." The new rules are substantively identical to the Federal regulations at 30 CFR 816.83 and 30 CFR 817.83 with one exception. In subsection (3)(e), Alabama improperly cites section 10C–.63 instead of section 10C–.62. Therefore, the Director finds the proposed amendments to be less effective than the Federal regulations at 30 CFR 816.83 and 30 CFR 817.83 and will require that Alabama correct the citation.

47. 880–X–10C–.41 and 880–X–10D–.37 Coal Processing Waste Banks: Construction Requirements

Alabama proposes to repeal these rules and replace them with new regulations entitled "Coal Mine Waste: Impounding Structures". The requirements of the new rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.84 and 30 CFR 817.84. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.84 and 30 CFR 817.84.

48. 880–X–10C–.42 and 880–X–10D–.38 Coal Processing Waste: Burning

Alabama proposes to repeal these rules and replace them with new regulations entitled "Coal Mine Waste: Burning and Burned Waste Utilization" at 880–X–10C–.43 and 880–X–10D–.39. The requirements of the new rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.87 and 30 CFR 817.87. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.87 and 30 CFR 817.87.

49. 880–X–10C–.43 and 880–X–10D–.39 Coal Processing Waste: Burned Waste Utilization

Alabama proposes to repeal these rules and replace them with new regulations entitled "Coal Mine Waste: Burning and Burned Waste Utilization." The requirements of the new rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.87 and 30 CFR 817.87. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.87 and 30 CFR 817.87.

50. 880–X–10C–.44 and 880–X–10D–.40 Coal Processing Waste: Return to Underground Workings

Alabama proposes to repeal these rules since their requirements have been consolidated into 880–X–10C–.38(6) and 880–X–10D–.34(6). Since the subject previously addressed by these subsections are adequately covered by new sections 880–X–10C–.38(6) and 880–X–10D–.34(6), the Director finds the amendments do not alter the status of the Alabama program. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.81(f) and 30 CFR 817.81(f).

51. 880–X–10C–.45 and 880–X–10D–.41 Disposal of Non-Coal Wastes

Alabama proposes to repeal these rules and replace them with new regulations entitled "Disposal of Non-coal Mine Wastes." The requirements of the new rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.89 and 30 CFR 817.89 with one exception. In subsection 2, Alabama improperly cites section 10C–.63 instead of section 10C–.62. Therefore, the Director finds the proposed amendments to be less effective than the Federal regulations at 30 CFR 816.89 and 30 CFR 817.89 and will require that Alabama correct the citation.

52. 880–X–10C–.46 and 880–X–10D–.42 Coal Processing Waste: Dams and Embankments; General Requirements

Alabama proposes to repeal these rules since their requirements have been consolidated into 880–X–10C–.41 and 880–X–10D–.37. Since the subjects previously addressed by these subsections are adequately covered by new 880–X–10C–.41 and 880–X–10D–.37, the Director finds the proposed amendments do not alter the status of the Alabama program. Therefore, the Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 816.84 and 30 CFR 817.84.

53. 880–X–10C–.47 and 880–X–10D–.43 Coal Processing Waste: Dams and Embankments: Site Preparation

Alabama proposes to repeal these rules since their requirements have been consolidated into 880–X–10C–.41 and 880–X–10D–.37. The Director finds the proposed amendments do not alter the status of the Alabama program. Therefore, the Director finds the amendments to be no less effective than the Federal regulations at 30 CFR 816.84 and 30 CFR 817.84.

54. 880–X–10C–.48 and 880–X–10D–.44 Coal Processing Waste: Dams and Embankments: Design and Construction

Alabama proposes to repeal these rules since their requirements have been consolidated into 880–X–10C–.41 and 880–X–10D–.37. The Director finds the proposed amendments do not alter the status of the Alabama program. Therefore, the Director finds the amendments to be no less effective than the Federal regulations at 30 CFR 816.84 and 30 CFR 817.84.

55. 880–X–10C–.49 and 880–X–10D–.45 Protection of Fish, Wildlife, and Related Environmental Values

Alabama proposes to repeal these rules and replace them with new rules that are substantively identical to the requirements of the Federal regulations at 30 CFR 816.97 and 30 CFR 817.97. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.97 and 30 CFR 817.97.

56. 880–X–10C–.52 Backfilling and Grading: Timing

Alabama proposes to amend its present rule by re-designating paragraphs (1) a, b, and c, as paragraphs (1), (2), and (3) and, by removing subsection (2) entitled, "Methods for Backfilling and Grading." Requirements for backfilling and grading are now located in 880–X–10C–.53. The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 816.100.

57. 880–X–10C–.53 and 880–X–10D–.48 Backfilling and Grading: General Requirements

Alabama proposes to repeal these rules and replace them with new rules entitled "Backfilling and Grading: General Requirements." The new rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.102 and 30 CFR 817.102. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.102 and 30 CFR 817.102.

58. 880–X–10C–.54 and 880–X–10D–.50 Backfilling and Grading: Coal and Acid and Toxic-forming Materials

Alabama proposes to repeal these rules since their provisions have been consolidated into 880–X–10C–.53 and 800–X–10D–.48. The Director finds the amendment to be no less effective than the Federal regulation at 30 CFR 816.102 and 30 CFR 817.102.

59. 880–X–10C–.55 Backfilling and Grading: Thin Overburden

Alabama proposes to redesignate this rule as 880–X–10C–.54 and to amend it by affecting one reference change required because of the redesignation of section numbers. The amendment is substantively identical to the Federal regulation at 30 CFR 816.104. The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 816.104.

60. 880–X–10C–.56 Backfilling and Grading: Thick Overburden

Alabama proposes to redesignate this rule as 880–X–10G–.55 and to amend it by affecting one reference change required because of the redesignation of section numbers. The amendment is substantively identical to the Federal regulation at 30 CFR 816.105. The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 816.105.

61. 880–X–10C–.56 and 880–X–10D–.49 Backfilling and Grading: Previously Mined Areas

Alabama proposes to amend its rules by adding new sections 880–X–10C–.56 and 880–X–10D–.49. These new sections are identical to the Federal regulations at 30 CFR 816.106 and 30 CFR 817.106. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.106 and 30 CFR 817.106.

62. 880–X–10C–.58 and 880–X–10D–.52 Revegetation: General Requirements

Alabama proposes to repeal these rules and replace them with new rules. The requirements of the new rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.111 and 30 CFR 817.111. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.111 and 30 CFR 817.111.

63. 880–X–10C–.59 and 880–X–10D–.53 Revegetation: Use of Commercial and Introduced Species

Alabama proposes to repeal these rules since their requirements have been incorporated into 880–X–10C–.58 and 880–X–10D–.52. The Director finds the amendments to be no less effective than the Federal regulations.

64. 880–X–10C–.60 and 880–X–10D–.54 Revegetation: Timing

Alabama proposes to repeal these rules and replace them with new regulations entitled "Revegetation: Revegetation Timing and Soil Stabilization Practices." The requirements of the new rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.113, 30 CFR 816.114, and 30 CFR 817.113, 30 CFR 817.114. Therefore, the Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.113, 30 CFR 816.114 and 30 CFR 817.113, 30 CFR 817.114.

65. 880–X–10C–.61 and 880–X–10D–.55 Revegetation: Mulching and other Soil Stabilization Practices

Alabama proposes to repeal these rules since their requirements have been consolidated into new 880–X–10C–.60 and 880–X–10D–.54. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.114 and 30 CFR 817.114.

66. 880–X–10C–.62 and 880–X–10D–.56 Revegetation: Standards for Success

Alabama proposes to repeal these rules and replace them with new rules. The requirements of the new rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.116 and 30 CFR 817.116. However, the proposed amendment specifies that the sampling techniques used shall conform to the outline in the Alabama Surface Mining Commission (ASMC) Technical Manual No. 1, or the alternative methods approved by ASMC. The Federal regulations at 30 CFR 816.116(a)(1) require that the standards for success and sampling techniques for measuring success shall be selected by the regulatory authority and included in the approved regulatory program. Therefore, to be no less effective as the Federal regulations the State must either delete the provision allowing for alternative methods or clarify that no alternative methods will be approved by the State until these methods are approved by OSM for inclusion in the Alabama program through the State program amendment process.

Further, Alabama fails to include a requirement that stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the appropriate State agencies as required by 30 CFR 816.116(b)(3)(i) and 30 CFR 817.117(b)(3)(i). At subsection (2)(e), Alabama also fails to apply the stocking success standards at 30 CFR 816.116(b)(3)(ii) and 30 CFR 817.116(b)(3)(ii) to areas other than wildlife habitats such as those areas developed for fish habitat, recreation, shelter belts, or forest products. At subsection (2)(c)(iv), Alabama uses a 3 season growing standard to determine successful revegetation. To be no less effective than the Federal rules at 30 CFR 816.116(b)(3)(ii) and 30 CFR 817.116(b)(3)(ii), Alabama must require that 80 percent of the stock be in place for at least 3 years (60 percent) of the 5 year responsibility period. The Director finds the proposed amendments to be less effective than the Federal regulations at 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1) and 30 CFR 816.116(b)(3) and 30 CFR 817.116.(b)(3).

67. 880–X–10C–.63 and 880–X–10D–.57 Revegetation: Tree and Shrub Stocking for Forest Land and Land Used for Fish and Wildlife Habitat

Alabama proposes to repeal these rules since their requirements have been consolidated into 880–X–10C–.62 and 880–X–10D–.56. There are no Federal counterparts to these rules. The Director finds the proposed amendments to be no less effective than the Federal regulations.

68. 880–X–10D–.58 Subsidence Control: General Requirements

Alabama proposes to repeal this rule and replace it with a new rule incorporating the requirements of the Federal regulations at 30 CFR 817.121. The new rule is substantively identical to the Federal rules at 30 CFR 817.121. However, in the case of *National Wildlife Federation* v. *Lujan*, Nos. 87–1051, 87–1814 and 88–2788 (D.D.C. February 12, 1990), the court remanded 30 CFR 817.121(c)(2) which uses language essentially identical to the language of this section. The Director believes the phrase "to the extent required under State law" as used in this rule, is similarly invalid and that any proposed State rule equivalent must be disapproved. An applicant's subsidence control plan must be prepared without regard to the liability limitations of State law. Based on the court's remand of similar language, the Director is not approving the proposed amendment. The Director will, according to 30 CFR 732.17(d), inform Alabama of the required regulatory changes needed to correct this deficiency. The Director finds the proposed amendment to be less effective than the Federal regulations at 30 CFR 817.121.

69. 880–X–10D–.59 Subsidence Control: Public Notice

Alabama proposes to repeal this rule and replace it with a new rule incorporating the requirements of the Federal regulation at 30 CFR 817.122. Since the new rule is substantively identical to the Federal regulation at 30 CFR 817.122, the Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 817.122.

70. 880–X–10D–.60 Subsidence Control: Surface Owner Protection

Alabama proposes to repeal this rule. Since there is no Federal counterpart to

this rule, and its essential requirements are incorporated in new 880–X–10D–.58, the Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 817.121.

71. 880–X–10D–.61 Subsidence Control: Buffer Zones

Alabama proposes to repeal this rule. Since there is no Federal counterpart to this rule, and its essential requirements are incorporated in new 880–X–10D–.58, the Director finds the amendment to be no less effective that the Federal regulations at 30 CFR 817.121.

72. 880–X–10F–.03 Auger Mining: Additional Performance Standards

Alabama proposes to amend its present rule to conform its language to the Federal regulations at 30 CFR 819.11 through 30 CFR 819.21. The amendment provides at sub-section (5) that the Regulatory Authority may prohibit auger mining as necessary to protect against adverse water quality impacts or to maximize the utilization, recoverability or conservation of the solid fuel resource. It adds new requirements to sub-section (3) to minimize the disturbance of surface and ground water from auger holes. The requirements include sealing within 72 hours if the holes are discharging water containing acid or toxic-forming materials, or if sealing is not possible within that time frame, the treatment to meet applicable effluent limitations and water quality standards until sealing can be accomplished. The amendment also adds at subsection (6) a requirement that auger mining be conducted in accordance with the regulations on subsidence control, and provides new requirements on backfilling and grading of auger mining sites, at sub-section (7), that are identical to the Federal requirements of the Federal regulations at 30 CFR 819.19. Since the proposed amendment renders the Alabama rule substantively identical to the Federal regulations at 30 CFR 819.11 through 30 CFR 819.21, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 819.11 through 819.21.

73. 880–X–10G–.01 through 880–X–10G–.06 Special Performance Standards: Operations on Prime Farmlands

Alabama proposes to repeal its present rules at 880–X–10G–.01 through 880–X–10G–.07 and to replace them with new rules that are substantively identical, with one exception, to the Federal regulations at 30 CFR part 23. The proposed rules address the subjects of Scope and Purpose, Responsibilities, Applicability, Soil Removal and Stockpiling, Soil Replacement, and Revegetation and Restoration of Soil Productivity. However, the proposed amendment does not include a requirement in 880–X–10G–.05, Soil Replacement, comparable to 30 CFR 823.14(d) providing that where the B and C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore pre-mining capabilities. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR part 23, except that 880–X–10G–.05 is found to be less effective than the Federal regulations at 30 CFR 823.14(d).

74. 880–X–10I–.04 (listed as 880–X–10I–.06 in Proposed Rule) Steep Slopes: Performance Standards

Alabama proposes to repeal its present rule and replace it with a new rule to provide additional performance standards for steep slope mining. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 816.107 and 30 CFR 817.107. Therefore the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 816.107 and 30 CFR 817.107.

75. 880–X–10I–.06 (listed as 880–X–10I–.04 in Proposed Rule) Steep Slopes: Multiple Seams

Alabama proposes to repeal this rule since all of its requirements have either been consolidated into other rules or are no longer required by Federal regulation. The Director finds the amendment does not render the Alabama program less effective than the Federal regulations.

76. 880–X–11A–.04 (listed as 880–X–11A–.06 in Proposed Rule) Availability of Records

Alabama proposes to amend this rule at sub-section (2) by adding the requirement that records available to the public under this rule remain available for at least 5 years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond. The amended rule is substantively identical to the Federal rule at 30 CFR 840.14. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 840.14.

77. 880–X–11B–.02 Inspections

Alabama proposed to amend this rule to conform its language to the language of the Federal regulations at 30 CFR 840.11. The amended rule specifies that the State regulatory authority shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of inactive sites under its jurisdiction as are necessary to ensure effective enforcement of the state program. It provides further that the State regulatory authority shall conduct at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. The amendment also adds new paragraph (4) providing that aerial inspections shall be conducted in a manner which will reasonably ensure the identification and documentation of conditions at each surface coal mining and reclamation site inspected. Any potential violation observed during an aerial inspection shall be investigated on-site within 3 days; provided that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order pursuant to rule 880–X–11C–.02 shall be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (1) and (2) of this rule. The amendment conforms the language of the State rule to the language of the Federal regulations at 30 CFR 840.11 (a) through (f) and the Director finds that the proposed amendment is no less effective than the comparable Federal regulation.

78. 880–X–11C–.02 Cessation Orders

Alabama proposes to amend this rule by adding a new paragraph (c) to provide that surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit or license constitutes a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. The Director finds the proposed amendment to be substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 843.11.

79. 880–X–11D–.10 Procedures for Assessment Conference

Alabama proposes to amend this rule to conform its language to the language of the Federal regulations at 30 CFR 845.18. To accomplish this end Alabama proposes to add a new paragraph (c) to subsection (4) to provide that at a formal review following an assessment

conference, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 845.18 (a) and (f).

80. 880–X–11E Individual Civil Penalties

Alabama proposes to add a new subchapter of rules on Individual Civil Penalties. The proposed rules 880–X–11E–.01 through 880–X–11E–.06 address "Scope, Definitions, When an Individual Civil Penalty May Be Assessed, Amount of Individual Civil Penalty, Procedure for Assessment of Individual Civil Penalty, and Payment of Penalty."

The proposed rules at 11E–.01 through .04 are substantively identical to the Federal regulations at 30 CFR 846.1 through 846.14. Additionally, the proposed rule at 11E–.05 (1) and (2) regarding notice and opportunity for review is substantively identical to 30 CFR 846.17 (a) and (b). However, 11E–.05(3) regarding service of individual civil penalties proposes that service is sufficient if it satisfies the requirements of 880–X–5A–.08, Alabama's service regulation for surface mining hearings and appeals. The corresponding Federal regulation at 30 CFR 846.17(c) refers to Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint to determine sufficiency of service. Since Rule 4(c)(2)(C)(i) defers to service pursuant to state law for service of summons or other like process, the Director finds that Alabama's proposed service regulation is consistent with the Federal regulation at 30 CFR 846.17(c). Alabama's proposed regulation at 11E–.06 is substantively identical to the Federal regulation at 30 CFR 846.18 but fails to include a requirement comparable to 30 CFR 846.18(d). In the Regulatory Reform II letter of November 28, 1988, OSM noted that the new Federal rule adopted at 30 CFR 846.18(d) reflects requirements placed on OSM by the Debt Collection Act of 1982 and that Alabama need not adopt a counterpart to this rule. The Director finds the proposed amendments at 880–X–11E–.01 through 880–X–11E–.06 to be no less effective than the Federal regulations at 30 CFR 846.1 through 846.18.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies. The U.S. Forest Service, and the U.S. Environmental Protection Agency responded to the request but provided no substantive comments on the proposed amendment.

The Department of Agriculture, Soil Conservation Service (SCS), submitted comments on several sections of the proposed amendment. The SCS commented that the term "vegetation" should be replaced with "plant community" at sections 880–X–10C–.58 and 10D–.52(2)(b) and "self-regeneration" should be replaced by "reseeding" or "regrowth" at 880–X–10C–.58. At 880–X–10C–.60, "normal" should be replaced with "recommended." The SCS also suggested that the local extension service office be listed as an optional source for information relating to the determination of favorable planting periods as used in section 880–X–10D–.54. The Director finds the proposed State regulations to be identical to the Federal regulations at 30 CFR 816.111, 816.113, and 817.111.

The SCS commented that restoration of productivity under section 880–X–10G–.06 should be considered achieved when prime farmland soils have been removed, stockpiled, reconstructed and stabilized according to the approved plan. The Director finds the proposed State regulation to be identical to the Federal regulation at 30 CFR part 823.

Public Comments

The public comment period and opportunity to request a public hearing announced in the December 20, 1989 **Federal Register** (54 FR 52042) ended on January 19, 1990. No one requested an opportunity to testify at the scheduled public hearing and no hearing was held.

In response to the request for comments, the Advisory Council on Historic Preservation (ACHP) submitted a statement containing pertinent comments. The ACHP commented that for legal accuracy and consistency the term "historic properties" should be used throughout the amendments, coupled with Alabama's definition for "historic lands" given at 880–X–2A–.06. The Director disagrees with the ACHP and directs the ACHP's attention to the Federal definitions at 30 CFR 762.5 where a definition for "historic lands" is found. No definition for "historic properties" is found in the Federal regulations. To be consistent with the Federal regulations, Alabama must use comparable definitions. In addition, the Director points out that the Federal definition of "historic lands" includes properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

The ACHP commented that the phrase "or eligible for inclusion in" the National Register needs to be added in the amendment wherever the phrase "listed in" is used. In 880–X–7B–.07, Alabama uses the phrase "included in the National Register of Historic Places." The Director notes that this language is identical to the Federal regulation at 30 CFR 761.12(f)(1). In 880–X–8I–.14, Alabama uses the phrase "listed on the National Register of Historic Places." The Director notes that this language is identical to the Federal regulation at 30 CFR 780.31(a).

The ACHP also commented that several of the proposed amendments are inconsistent with the Council's regulations (36 CFR part 800) concerning the identification of historic properties, the determination of the effects a mining project may have on historic properties, and the avoidance of or mitigation of the adverse effects to historic properties. Specifically, the ACHP is concerned with the absence of language in these regulations that would require the ASMC to consult with the Alabama State Historic Preservation Officer (SHPO) in these matters prior to its taking action on permits or permit revisions. The Director agrees with ACHP that there is no such language present in these regulations. However, since the requirement to coordinate the review and issuance of permits with the applicable requirements of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.), is present in the Alabama regulations at 880–X–8A.–07 it is not necessary to repeat the requirements in the proposed amendment. Further, the proposed amendments are substantively identical to their Federal counterparts as noted in Findings 3(e), 10, and 15.

The Alabama Historical Commission (AHC) commented that those cultural resources considered potentially eligible for inclusion on the National Register of Historical Places be afforded the same status and protection as those properties already listed on the Register. The AHC recommends that this provision be included in section 880–X–8C–.06(C). The Director finds, however, that the specific State regulation identified by the AHC is not being amended and the comment is therefore outside the scope of this rulemaking.

The AHC also commented that Alabama should be required to identify all historic properties which might be affected by a mining operation. The

Alabama regulations at 880–X–7B–.07 require a determination by the Regulatory Authority as to whether or not proposed surface coal mining operations will adversely affect any publicly owned park or any places included in the National Register of Historic Places. The Director notes that the State regulation is identical to the Federal regulation at 30 CFR 761.12(g)(1).

V. Director's Decision

Based on the above findings, the Director is approving, with the exceptions discussed in Findings 1(u), 17, 19(e), 25(a), 25(b), 25(c), 28, 36, 46, 51, 66, 68, and 73 which are not approved, the proposed amendments to the Alabama permanent program regulations as submitted on November 22, 1989.

The Director is amending 30 CFR part 901 to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform their program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Alabama program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Alabama of such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relates to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 24, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 901.15, a new paragraph (j) is added to read as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendments to the Alabama regulations submitted to OSM on November 22, 1989 are approved as set forth in paragraph (j)(1) of this section, effective February 5, 1991, with the exception of the regulatory provisions identified in paragraph (j)(2) of this section.

(1) Amendment to the following Alabama Surface Mining Commission regulations:

880–X–2A–.06 Definitions (with the exception noted in paragraph (j)(2) of this section).
880–X–2B–.01 Applicability.
880–X–7B–.07 Procedures.
880–X–7D–.10 Public Information.
880–X–8A–.07 Coordination with Requirements Under Other Laws.
880–X–8B–.06 Permit Applications—General Requirements for Format and Contents.
880–X–8C–.03 Coal Exploration Compliance Duties.
880–X–8D–.03 Relationship to Areas Designated Unsuitable for Mining.
880–X–8D–.14 Facilities or Structures Used in Common.
880–X–8E–.05 Cultural, Historical and Archaeological Resources Information.
880–X–8E–.06 Description of Geology and Hydrology and Determination of the Probable Hydrologic Consequences.
880–X–8E–.10 Prime Farmland Investigation.
880–X–8E–.11 Fish and Wildlife Information.
880–X–8F–.08 Operation Plan: Permit Map(s).
880–X–8F–.14 Protection of Public Parks and Historic Places.
880–X–8F–.18 Fish and Wildlife Protection and Enhancement Plans.
880–X–8G–.03 Relationship to Areas Designated Unsuitable for Mining.
880–X–8G–.14 Facilities or Structures Used in Common.
880–X–8H–.05 Cultural, Historical and Archaeological Resources Information.
880–X–8H–.06 Description of Geology and Hydrology and Determination of the Probable Hydrologic Consequences.
880–X–8H–.10 Prime Farmland Investigation.
880–X–8H–.11 Fish and Wildlife Information.
880–X–8I–.07 Operation Plan: Permit Map(s).
880–X–8I–.14 Protection of Public Parks and Historic Places.
880–X–8I–.18 Fish and Wildlife Protection and Enhancement Plan.
880–X–8J–.04 Experimental Practices Mining.
880–X–8J–.08 Soils and Prime Farmlands.
880–X–8K–.05 Public Notices of Filing of Permit Applications.
880–X–8K–.05 Public Participation in Permit Processing.
880–X–8K–.06 Opportunity for Submission of Written Comments on Permit Applications.
880–X–8K–.07 Right to File Written Objections.
880–X–8K–.08 Informal Conferences.
880–X–8K–.09 Public Availability of Information in Permit Applications on File with the State Regulatory Authority.
880–X–8K–.11 Permit Conditions.
880–X–8K–.12 Criteria for Permit Approval or Denial: Existing Structures.
880–X–8K–.12 Permit Issuance and Right of Renewal.

880–X–8K–.13 Permit Approval or Denial Actions.
880–X–8K–.14 Permit Terms.
880–X–8K–.15 Conditions of Permits: General and Right of Entry.
880–X–8K–.16 Conditions of Permits: Environment, Public Health, and Safety.
880–X–8M–.07 Permit Renewals: General Requirements.
880–X–8M–.07 Permit Renewals.
880–X–8M–.08 Permit Renewals: Applications.
880–X–8M–.09 Permit Renewals: Terms.
880–X–8M–.10 Permit Renewals: Approval or Denial.
880–X–8M–.11 Transfer, Assignment, or Sale of Permit Rights: General Requirements.
880–X–8M–.11 Transfer, Assignment, or Sale of Permit Rights.
880–X–8M–.12 Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval.
880–X–10B–.04 General Responsibilities of Persons Conducting Other Coal Exploration.
880–X–10B–.05 Required Documents.
880–X–10B–.06 Performance Standards for Coal Exploration (with the exception noted in paragraph (j)(2) of this section).
880–X–10C–.08 Topsoil: Removal.
880–X–10C–.12 Hydrologic Balance: General Requirements.
880–X–10C–.12 Hydrologic-Balance Protection.
880–X–10C–.14 Hydrologic-Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow and Streams.
880–X–10C–.14 Diversions.
880–X–10C–.24 Hydrologic Balance: Transfer of Wells.
880–X–10C–.26 Hydrologic Balance: Discharge of Water in an Underground Mine.
880–X–10C–.28 Hydrologic Balance: Stream Buffer Zones.
880–X–10C–.37 Protection of Underground Mining.
880–X–10C–.38 Coal Processing Waste Banks: General Requirements.
880–X–10C–.38 Coal Mine Waste: General Requirements.
880–X–10C–.39 Coal Processing Waste Banks: Site Inspection.
880–X–10C–.40 Coal Processing Waste Banks: Water Control Measures.
880–X–10C–.40 Coal Mine Waste: Refuse Piles (with the exception noted in paragraph (j)(2) of this section).
880–X–10C–.41 Coal Processing Waste Banks: Construction Requirements.
880–X–10C–.41 Coal Mine Waste: Impounding Structures.
880–X–10C–.42 Coal Processing Waste: Burning.
880–X–10C–.43 Coal Processing Waste: Burned Waste Utilization.
880–X–10C–.43 Coal Processing Waste: Burning and Burned Waste Utilization.
880–X–10C–.44 Coal Processing Waste: Return to Underground Workings.
880–X–10C–.45 Disposal of Non-Coal Wastes.
880–X–10C–.45 Disposal of Noncoal Mine Waste (with the exception noted in paragraph (j)(2) of this section).
880–X–10C–.46 Coal Processing Waste: Dams and Embankments: General Requirements.
880–X–10C–.47 Coal Processing Waste: Dams and Embankments: Site Preparation.
880–X–10C–.48 Coal Processing Waste: Dams and Embankments: Design and Construction.
880–X–10C–.49 Protection of Fish, Wildlife, and Related Environmental Values.
880–X–10C–.52 Backfilling and Grading: Timing.
880–X–10C–.53 Backfilling and Grading: General Grading Requirements.
880–X–10C–.52 Backfilling and Grading: General Requirements.
880–X–10C–.54 Backfilling and Grading: Coal and Acid and Toxic-forming Materials.
880–X–10C–.55 Backfilling and Grading: Thin Overburden.
880–X–10C–.56 Backfilling and Grading: Thick Overburden.
880–X–10C–.56 Backfilling and Grading: Previously Mined Areas.
880–X–10C–.58 Revegetation: General Requirements.
880–X–10C–.59 Revegetation: Use of Commercial and Introduced Species.
880–X–10C–.60 Revegetation: Timing.
880–X–10C–.60 Revegetation: Revegetation Timing and Soil Stabilization Practices.
880–X–10C–.61 Revegetation: Mulching and Other Soil Stabilization Practices.
880–X–10C–.63 Revegetation: Tree and Shrub Stocking for Forest Land and Land Used for Fish and Wildlife Habitats.
880–X–10D.08 Topsoil: Removal.
880–X–10D–.12 Hydrologic Balance: General Requirements.
880–X–10D–.12 Hydrologic Balance Protection.
880–X–10D–.14 Hydrologic Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow and Streams.
880–X–10D–.14 Diversions.
880–X–10D–.23 Hydrologic Balance: Transfer of Wells.
880–X–10D–.24 Hydrologic Balance: Discharge of Water into an Underground Mine.
880–X–10D–.26 Hydrologic Balance: Stream Buffer Zones.
880–X–10D–.34 Coal Processing Waste Banks: General Requirements.
880–X–10D–.34 Coal Mine Waste: General Requirements.
880–X–10D–.35 Coal Processing Waste Banks: Site Inspection.
880–X–10D–.36 Coal Processing Waste Banks: Water Control Measures.
880–X–10D–.36 Coal Mine Waste: Refuse Piles (With the exception noted in paragraph (j)(2) of this section).
880–X–10D–.37 Coal Processing Waste Banks: Construction Requirements.
880–X–10D–.37 Coal Mine Waste: Impounding Structures.
880–X–10D–.38 Coal Processing Waste: Burning.
880–X–10D–.39 Coal Processing Waste: Burned Waste Utilization.
880–X–10D–.39 Coal Mine Waste: Burning and Burned Waste Utilization.
880–X–10D–.40 Coal Processing Waste: Return to Underground Workings.
880–X–10D–.41 Disposal of Non-Coal Wastes.
880–X–10D–.41 Disposal of Noncoal Mine Wastes (With the exception noted in paragraph (j)(2) of this section).
880–X–10D–.42 Coal Processing Waste: Dams and Embankments: General Requirements.
880–X–10D–.43 Coal Processing Waste: Dams and Embankments: Site Preparaton.
880–X–10D–.44 Coal Processing Waste: Dams and Embankments: Design and Construction.
880–X–10D–.45 Protection of Fish, Wildlife, and Related Environmental Values.
880–X–10D–.48 Backfilling and Grading: General Requirements.
880–X–10D–.49 Backfilling and Grading: General Grading Requirements.
880–X–10D–.49 Backfilling and Grading: Previously Mined Areas.
880–X–10D–.52 Revegetation: General Requirements.
880–X–10D–.53 Revegetation: Use of Commercial and Introduced Species.
880–X–10D–.54 Revegetation: Timing.
880–X–10D–.54 Revegetation: Revegetation Timing and Soil Stabilization Practices.
880–X–10D–.55 Revegetation: Mulching and Other Soil Stabilizing Practices.
880–X–10D–.57 Revegetation: Tree and Shrub Stocking for Forest Land and Land Used for Fish and Wildlife Habitat.
880–X–10D–.59 Subsidence Control: Public Notice.
880–X–10D–.60 Subsidence Control: Surface Owner Protection.
880–X–10D–.61 Subsidence Control: Buffer Zones.
880–X–10F–.03 Auger Mining: Additional Performance Standards.
880–X–10G Special Performance Standards—Operations on Prime Farmlands (with the exception noted in paragraph (j)(2) of this section).
880–X–10I–.04 Steep Slopes: Performance Standards.
880–X–10I–.06 Steep Slopes: Multiple Seams.
880–X–11A–.04 Availability of Records.
880–X–11B–.02 Inspections.
880–X–11C–.02 Cessation Orders.
880–X–11D–.10 Procedures for Assessment Conference.
880–X–11E Individual Civil Penalties.

(2) The following regulatory provisions are not being approved:

i. 880–X–2A–.06 Definitions—to the extent that in the case of *National Wildlife Federation* v. *Lujan* (D.D.C. Feburary 12, 1990), the court remanded the definition of "previously mined area" at 30 CFR 701.5 which uses language essentially identical to this section.

ii. 880–X–8I–.10 Subsidence Control Plan—to the extent that in the case of *National Wildlife Federation* v. *Lujan* (D.D.C. February 12, 1990), the court remanded 30 CFR 817.121(c)(2) which uses language essentially identical to this section.

iii. 880–X–8K–.10 Review of Permit Applications—to the extent that this section does not include all the provisions of the Federal regulations at 30 CFR 773.15.

iv. 880–X–10B–.06 Performance Standards for Coal Exploration—to the extent that section (d) of the amendment does not provide for separate removal, storage and redistribution of topsoil.

v. 880–X–10C–.40, 880–X–10D–.36 Coal Processing Waste Banks: Refuse Piles—to the extent that an improper cite appears in this section.

vi. 880–X–10C–.45, 880–X–10D–.41 Disposal of Noncoal Mine Waste—to the extent that an improper cite appears in this section.

vii. 880–X–10C–.62, 880–X–10D–.56 Revegetation: Standards for Success—to the extent that Alabama allows alternative sampling techniques, and to the extent that Alabama fails to apply stocking success standards to areas other than wildlife habitats, and to the extent that Alabama uses a 3 season growing standard to determine successful revegetation.

viii. 880–X–10D–.58 Subsidence Control: General Requirements—to the extent that in the case of *National Wildlife Association* v. *Lujan* (D.D.C. February 12, 1990), the court remanded 30 CFR 817.121(c)(2) which uses language essentially identical to this section.

ix. 880–X–10G–.05 Special Performance Standards: Operations on Prime Farmlands—to the extent that Alabama does not provide for certain soil restoration requirements.

3. Add a new § 901.16 to read as follows:

§ 901.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17, Alabama is required to submit for OSM's approval the following proposed program amendments by the date specified. By March 7, 1991, Alabama shall submit:

(a) An amendment to ASMC rules at 880–X–8J–.08(1)(d) to remove the term "amendment" from inclusion in the definition of a permit revision.

(b) An amendment to ASMC rules at 880–X–8J–.08 to provide that the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining.

(c) An amendment to ASMC rules at 880–X–8K–.10(2)(a) to add a prohibition of the unconditional issuance of a permit where any person who owns or controls the applicant is currently in violation of SMCRA, any State or Federal laws, rules or regulations pertaining to air or water environmental protection, or where any of the parties listed above owe delinquent civil penalties or abandoned mine land reclamation fees, or where they have forfeited bond and the underlying violation has not been corrected.

(d) An amendment to ASMC rules at 880–X–8K–.10 to specify that any permit issued in a situation where a person is in the process of either correcting or appealing an outstanding violation shall be issued solely on a conditional basis.

(e) An amendment to ASMC rules at 880–X–8K–.10 to extend the prohibition on permit issuance to situations where the operator specified in the application or anyone who owns or controls the applicant, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of such a nature and duration as to indicate an intent not to comply with the program.

(f) An amendment to ASMC rules at 880–X–8K–.11 to require that in the absence of a stay, within 30 days after issuance of a cessation order for operations conducted under the permit, the permittee notify the regulatory authority of any changes that have occurred in the ownership and control information submitted at the time of application or since the submittal of the last update of this information. If no change has occurred the permittee must submit a statement to that effect.

(g) An amendment to ASMC rules at 880–X–10B–.06(d) to provide that topsoil shall be "separately" removed, stored, and redistributed.

(h) An amendment to ASMC rules at 880–X–10C–.40 and 880–X–10D–.36 to correct an improper cite from "10C–.63" to "10C–.62."

(i) An amendment to ASMC rules at 880–X–10C–.45 and 880–X–10D–.41 to correct an improper cite from "10C–.63" to "10C–.62."

(j) Amendments to ASMC rules at 880–X–10C–.62 and 880–X–10D–.56 to:

(1) either delete the provisions allowing for alternative methods or clarify that no alternative methods will be approved by the State until these methods are approved by OSM for inclusion in the Alabama program through the State program amendment process;

(2) include a requirement that stocking and planting arrangements be specified by the Regulatory Authority on the basis of local and regional conditions and after consultation with and approval by the appropriate State agencies;

(3) apply stocking success standards to areas other than wildlife habitats, and

(4) use a 3 year standard to determine successful revegetation.

(k) An amendment to ASMC rules at 880–X–10G–.05 to provide that where the B and C soil horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore pre-mining capabilities.

[FR Doc. 91–2469 Filed 2–4–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles/Long Beach Reg. 91–05]

Security Zone Regulations: Port of Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Security Zone of the navigable waters of Los Angeles/Long Beach harbors seaward of the Long Beach Naval Station Mole beginning at latitude 33–45'–06.5" N, longitude 118–14'–54.0" W; thence southerly to latitude 33–44'–38.5" N, longitude 118–14'–43.0" W; thence southeasterly to latitude 33–44'–30.0" N, longitude 118–14'–31.5" W; thence easterly to latitude 33–44'–24.0" N, longitude 118–13'–53.5" W; thence easterly to latitude 33–44'–39.5" N, longitude 118–13'–01.0" W; thence northwesterly to latitude 33–44'–42.0" N, longitude 118–13'–03.5" W; thence northwesterly to latitude 33–44'–47.0" N, longitude 118–13'–13.0" W. This describes an area of the navigable waters of Los Angeles/Long Beach extending a minimum of 50 yards out along the entire outer face, and at the eastern end, of the Long Beach Naval Station Mole. The zone is needed to safeguard U.S. military activities at Naval Station Long Beach against destruction/loss/injury from sabotage or other subversive acts, accidents, or causes of a similar nature during Operation Desert Storm. Entry into this zone is prohibited unless authorized by the Captain of the Port, or the Commanding Officer, Naval Station Long Beach.

EFFECTIVE DATES: This regulation becomes effective at 12 noon, January 25, 1991. It terminates at 12 midnight June 31, 1991.

FOR FURTHER INFORMATION CONTACT: Lt R. F. Shields at (213) 499–5570.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction/loss/injury to military activities at Naval Station Long Beach.

Drafting Information

The drafters of this regulation are Lt R. F. Shields project officer for the Captain of the Port, and LCDR A. Lotz, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation will begin at 12 noon, on January 25, 1991. This Security Zone is necessary to ensure the security of military activities at Naval Station Long Beach during Operation Desert Storm.

List of Subjects in 33 CFR Part 165

Harbors marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1105 is added to read as follows:

§ 165.T1105 Security Zone: Port of Long Beach, CA.

(a) *Location.* The following area is a Security Zone: The navigable waters of Los Angeles/Long Beach harbors seaward of the Long Beach Naval Station Mole beginning at latitude 33–45'–06.5" N, longitude 118–14'–54.0" W; thence southerly to latitude 33–44'–38.5" N, longitude 118–14'–43.0" W; thence southeasterly to latitude 33–44'–30.0" N, longitude 118–14'–31.5" W; thence easterly to latitude 33–44'–24.0" N, longitude 118–13'–53.5" W; thence easterly to latitude 33–44'–39.5" N, longitude 118–13'–01.0" W; thence northwesterly to latitude 33–44'–42.0" N, longitude 118–13'–03.5" W; thence northwesterly to latitude 33–44'–47.0" N, longitude 118–13'–13.0" W. This describes an area of the navigable waters of Los Angeles/Long Beach extending a minimum of 50 yards out along the entire outer face, and at the eastern end, of the Long Beach Naval Station Mole.

(b) *Effective Date.* This regulation becomes effective at 12 noon, January 25, 1991. It terminates at 12 midnight June 31, 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person may swim, skin dive or scuba dive in the waters within the Security zone, and no vessel may enter, remain in, or transit the Security Zone without the permission of the Captain of the Port or the Commanding Officer, Naval Station Long Beach.

Section 165.33 also contains other general requirements.

Dated: January 25, 1991.

J. B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 91–2672 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–14–M

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–236]

Organization and Delegation of Powers and Duties; Implementation of Aviation Safety and Capacity Expansion Act of 1990, Airport Noise and Capacity Act of 1990, and the Aviation Security Improvement Act of 1990

AGENCY: Department of Transportation (DOT) Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment delegates authority to the Federal Aviation Administrator to the necessary actions to implement certain provisions of the Aviation Safety and Capacity Expansion Act of 1990 (including provisions that amend the Federal Aviation Act of 1958 and the Airport and Airway Improvement Act of 1982) and of the Airport Noise and Capacity Act of 1990, Title IX, subtitles B and D, respectively, of the Omnibus Budget Reconciliation Act of 1990. This amendment also delegates to the Federal Aviation Administrator authority to implement certain provisions of the Aviation Security Improvement Act of 1990.

EFFECTIVE DATE: January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Barry L. Molar, General Legal Service Division, Airports and Environmental Law Branch, AGC–130, Federal Aviation Administration, AGC–130, U.S. Department of Transportation, 800 Independence Ave. SW., 20591; telephone number (202) 267–3199, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590, telephone number (202) 366–9307.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental organization, notice and comment on it are unnecessary. For the same reason, good cause exists for not publishing the rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). The Secretary has determined that the authority to take certain actions under Title IX, subtitles B and D of the Omnibus Budget Reconciliation Act of 199 (Pub. L. 101–508) (hereafter the Aviation Safety and Capacity Expansion Act of 1990 and Airport Noise and Capacity Act of 1990, respectively) should be delegated to the Federal Aviation Administrator. The Secretary has made the same determination with respect to certain provisions of the Aviation Security Improvement Act of 1990 (Pub. L. 101–604). These delegations are effective as of January 31, 1991.

Under 49 U.S.C. 322, the Secretary has the authority to delegate responsibilities to other Departmental officials and offices. The Secretary has determined that the Federal Aviation Administrator (hereafter, Administrator) should carry out most of the statutory responsibilities of the Aviation Safety and Capacity Expansion Act of 1990 and the responsibilities of the Airport Noise and Capacity Act of 1990. The responsibilities being delegated relate to elements of subtitles B and D that amend statutory provisions that the Administrator already implements, *e.g.*, the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. App. 2201 *et seq.*, or are closely related to issues over which the Administrator has traditionally had direct responsibility (*e.g.*, aircraft noise and airport access restrictions). The Secretary has retained authority to implement the following selected provisions of subtitles B:

a. Subtitle B, Section 9113, Small Community Air Service Program;

(b) Subtitle B, Section 9125, Flight Takeoff or Landing Requirement for State Taxation;

c. Subtitle B, Section 9127, Certificate Transfers; and

d. Subtitle B, Section 9130, Prohibition Against Fraudulent Use of "Made in America" Labels;

These provisions do not pertain to matters within the scope of the Administrator's traditional responsibilities or involve matters that the Secretary as determined should otherwise remain the direct responsibility of the Secretary.

The Secretary has also determined that the Federal Aviation Administrator should carry out the Secretary's statutory responsibilities under amendments to sections 321 and 410 of the Federal Aviation Act included as provisions of the Aviation Security Improvement Act of 1990 (Pub. L. 101–604).

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organizations and functions (government agencies), Transportation Department.

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations 49 CFR part 1 is amended as follows:

PART 1—[AMENDED]

1. –The authority of part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.47 of 49 CFR part 1 is amended by adding paragraphs (r) (s) and (t) to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(r) Carry out the functions vested in the Secretary by the Airport Safety and Capacity Expansion Act of 1990, title IX, subtitle B of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (except those functions vested in the Secretary by sections 9113, 9125, 9127 and 9130).

(s) Carry out functions vested in the Secretary by Airport Noise and Capacity Act of 1990, title IX, subtitle D of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508.

(t) Carry out the functions vested in the Secretary by sections 321 and 410 of the Federal Aviation Act, as amended by the Aviation Security Improvement Act of 1990, Public Law 101–604, November 16, 1990.

Issued in Washington, DC, on January 31, 1991.

Samuel K. Skinner,

Secretary.

[FR Doc. 91–2671 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 56, No. 24
Tuesday, February 5, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531, 536, 772, 831, 841, 842, 846, 870, and 890

Interim Relief

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is publishing for comment proposed regulations at 5 CFR parts 531, 536, 772, 831, 841, 842, 846, 870, and 890 to provide agencies with the authorities necessary to take interim personnel actions providing interim relief pursuant to the *Whistleblower Protection Act of 1989* (Pub. L. 101–12), to be codified at 5 U.S.C. 7701(b)(2)(A). The proposed regulations address the areas of: (1) Taking personnel actions to effect interim relief, (2) pay and benefits administration, and (3) the effect of interim relief on entitlement to retirement, health, and life insurance benefits for the period of time an employee or applicant for employment remains in an interim relief status.

DATES: Comments must be received on or before April 8, 1991.

ADDRESSES: Written comments may be sent to Marjorie A. Marks, Chief, Employee Relations Division, Office of Employee and Labor Relations, Office of Personnel Management, room 7412; 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: For parts 531 and 536: Robert T. Gatewood (202) 606–2858 or FTS 266–2858; for part 772: Gary D. Wahlert (202) 606–2920 or FTS 266–2920; and for parts 831, 841, 842, 846, 870, and 890: Patricia A. Rochester (202) 606–0775 or FTS 266–0775, ext. 207.

SUPPLEMENTARY INFORMATION: The *Whistleblower Protection Act of 1989* provided that prevailing parties in an appeal to the Merit Systems Protection Board (MSPB) "* * * shall be granted the relief provided in the decision, and remaining in effect pending the outcome of any petition for review * * *." The proposed regulations would authorize agencies to take interim personnel actions to provide a prevailing employee the interim relief ordered in an MSPB initial decision, pending (1) a final decision on the matter by the Board should there be a petition for review of the initial decision, or (2) the initial MSPB decision's (granting the interim relief) becoming final under the statute should there be on petition for review of the initial decision. For example, if a personnel action to remove an employee involuntarily is overturned by an MSPB initial decision, the agency would, pursuant to an interim relief order, restore the employee to his or her former position pending the issuance of a final Board order or the intitial decision becoming final. An interim personnel action can include, but is not limited to, interim appointments, interim repromotions after demotion, and interim within-grade increases. The rational for and explanation of changes to various parts of the Code of Federal Regulations are discussed below:

1. Part 772—Effective Date of an Interim Personnel Action

5 U.S.C. 7701(b)(2)(A) requires that interim relief must be made effective as of the date the initial decision is issued even though, for various reasons, there may be some lag time between the issuance of the initial decision granting interim relief and the effecting of interim relief by the agency. If an agency elects to file a petition for review of the intitial decision which grants interim relief, the agency must take a personnel action providing interim relief. (The law provides that if an MSPB administrative judge determines that interim relief would not be appropriate, it should not be provided.) If the agency allows the initial decision to become final, it must provide the relief specified in the initial decision on a permanent basis.

2. Part 772—Ending of Relief Provided by an Interim Personnel Action

The relief provided by an interim personnel action ends upon the issuance of a final Board order under 5 U.S.C. 7701(b)(2)(A) or when neither party appeals the initial decision and it becomes the final decision of the Board pursuant to 5 U.S.C. 7701(e)(1). The ending of relief provided by an interim personnel action in this manner is not subject to adverse action procedures and is neither appealable nor grievable. Relief provided by an interim personnel action may be ended sooner in certain circumstances. These circumstances include the reaching of a settlement agreement which involves cancelling the interim personnel action, the voluntary request by the employee that the interim personnel action be cancelled after he or she secures other employment, leaves the agency or retires, or the removing of an employee from an interim appointment for cause such as misconduct during the interim relief period under adverse action procedures.

3. Part 772—Employee Entitlements While in an Interm Relief Status

OPM proposes that except for back pay and attorney fees, an employee who has been granted interim relief through an interim personnel action will be entitled to all of the compensation and benefits he or she would ordinarily receive if the relief effected had been on a permanent basis. These entitlements include, but are not restricted to: Basic pay, within-grade increases, merit increases granted under the Performance Management and Recognition System, life insurance, health insurance, retirement coverage, leave accrual, and, as appropriate, participation in the Thrift Plan. Likewise, it is noted that employees in an interim relief status are subject to the same rules affecting other employees, e.g., 5 CFR Part 752, *Adverse Actions;* 5 CFR Part 432, *Performance Based Reduction in Grade and Removal Actions;* 5 CFR Part 351, *Reduction in Force;* etc.

4. Part 772—Back Pay and Attorney Fees

Interim relief does not entitle the employee to awards of back pay or attorney fees. Decisions concerning these awards will be made after a decision is issued by the full Board, or after an initial decision becomes final pursuant to 5 U.S.C. 7701(e)(1)(A).

5. Part 531—Interim Within-Grade Increases

Under OPM's regulations in part 531, if an agency properly grants a within-grade increase, there is no mechanism for specifically terminating the employee's entitlement to the within-

grade increase. However, when the personnel action being appealed is the withholding of a within-grade increase, the only possible interim relief is the interim granting of the within-grade increase. Should the full Board ultimately sustain the agency's withholding of the within-grade increase, the agency needs a mechanism for terminating the interim relief—i.e., terminating the employee's entitlement to the within-grade increase, which no longer has a legal basis. OPM proposes to amend part 531 to permit agencies to grant interim within-grade increases, which may be terminated or made permanent, as appropriate, after the Board's final action.

The break in service immediately preceding an interim appointment is not creditable service for within-grade increase purposes. If the Board's final action overturns a removal and the employee has received a within-grade increase during the interim appointment, the break in service is cancelled and the agency must recompute the effective date of the within-grade increase to reflect the additional period of creditable service.

6. Part 531—Highest Previous Rate

OPM proposes to prohibit use of a rate of pay as an employee's highest previous rate under part 531 when that rate of pay was received solely during a period of interim relief. If the legal basis for the interim rate of pay is removed—e.g., the agency's action is ultimately sustained by the full Board—OPM does not believe it would be appropriate to fix an employee's pay based on the rate of pay received solely during the period of interim relief.

7. Part 536—Grade and Pay Retention

Under existing regulations, a break in service of 3 days or more normally terminates an employee's entitlement to grade or pay retention. In virtually all cases of interim relief involving removal actions, more than 3 days will elapse between the effective date of the removal and the effective date of the interim personnel action. OPM proposes to amend part 536 so that entitlement to grade and pay retention may be continued during a period of interim relief.

8. Part 831—Retirement, Part 841—Federal Employees Retirement System—General Administration, and Part 842—Federal Employees Retirement System—Basic Annuity

OPM proposes to amend the current regulations to make clear that an employee with an interim appointment under the interim relief provisions in 5 U.S.C. 7701(b)(2)(A) may be covered under the Civil Service Retirement System or the Federal Employees Retirement System, as appropriate.

Agencies are required to notify OPM when they appoint on an interim basis an individual who had previously retired so that OPM can suspend the annuity payments until final disposition of the appeal case before the MSPB or until the interim appointment is otherwise ended. If the MSPB decision requiring interim relief is reversed by the full Board and the employees's separation is sustained or the employee voluntarily agrees to terminate the interim appointment, the employee's annuity will be resumed effective the day after the interim appointment terminates. The annuitant will be deemed to have been a reemployed annuitant during the interim appointment for the limited purpose of applying for any benefits for which he or she qualifies under the provisions of 5 U.S.C. 8344 or 8468. If the initial MSPB decision canceling the agency's separation action (and thereby retroactively reinstating or restoring the employee) is not appealed and becomes the MSPB's final action, if a final MSPB decision cancels the separation, or if the agency voluntarily agrees to cancel the separation, the employing agency must notify OPM. The agency's notice to OPM should include a request that OPM specify the amount of any erroneous payment—including recurring annuity payments or refunded retirement deductions—to be recovered by the employing agency from any back pay to which the employee may be entitled.

These regulations would provide that waiver consideration under 5 U.S.C. 8346(b) or 5 U.S.C. 8470(b) will not be given to any part of an erroneous payment collected from the individual's back pay adjustment. While this provision is contrary to the court's final decision in the case of *Day* v. *OPM*, 833 F.2d 1580 (1987), it is consistent with Congressional intent expressed in the legislative history of section 1221(j) of the *Whistleblower Protection Act of 1989*. In this regard, the Joint Explanatory Statement at S 2784 of the *Congressional Record* on March 16, 1989, states that "'[t]he waiver provisions under sections 8346(b) and 8470(b) of title 5 should not be applicable." Thus, part of the impact of section 1221(j) is to negate the holding of the Federal Circuit in Day that OPM is required to grant equitable waiver consideration under 5 U.S.C. 8346(b) to a successful appellant before recovering through offset against a back pay award. However, an individual may request a waiver of the unrecover portion of the erroneous retirement benefit when there is no back pay or the back pay is insufficient to cover the entire erroneous payment.

9. Part 846—Federal Employees Retirement System—Electing Coverage

OPM proposes to amend the current regulations governing an employee's opportunities to elect FERS coverage. Because the order of interim relief is based on an initial finding that cancellation of a separation is appropriate, giving an employee an interim appointment under 5 U.S.C. 7701(b)(2)(A) will not convey a new opportunity for the employee to elect FERS coverage even though under normal circumstances a break in service would give rise to an election right.

10. Part 870—Basic Life Insurance and Part 890—Federal Employees Health Benefits Program

OPM proposes to amend the current regulations on health benefits and life insurance to allow coverage of an employee given an interim appointment under § 772.102 of this chapter.

Like any other employees with a break in service exceeding three days, employees who are given interim appointments generally may enroll in any health benefits plan or option for which they are otherwise eligible. However, if the individual is an annuitant and the annuity is suspended, the health insurance held as an annuitant is transferred to the employing agency.

For employees on interim appointments, the life insurance they had when they last separated from service is reinstated; however, if there is a break in service of at least 180 days, they may increase their level of coverage. If they are annuitants, the life insurance coverage they have as annuitants does not affect their coverage when they are reemployed.

If the final outcome of the appeal is to reverse the separation and award back pay, the regular rules governing cancellation of an erroneous separation apply.

11. Part 772—Processing Interim Personnel Actions

Guidance on preparing official documentation to effect an interim personnel action is located in FPM Supplement 296–33. When an interim action is effected, the agency must retain in the individual's Official Personnel Folder (OPF) the Notification of Personnel Action (SF 50) documenting the action that gave rise to the appeal. If the initial decision granting interim relief is later overturned or the interim

personnel action is otherwise cancelled, the SF 50 documenting the interim action must be removed from the OPF when the cancellation is effected. When a final Board order is issued, the agency must follow the instructions in FPM Chapter 296 and FPM Supplement 296–33 to document the actions required by the decision.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Parts 531, 536, 772, 831, 841, 842, 846, 870, 890

Administrative practice and procedure; Government employees; Retirement; Health benefits; Life insurance.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend parts 531, 536, 772, 831, 841, 842, 846, 870, and 890 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and chapter 54; subpart B also issued under 5 U.S.C. 5305(q), 5333(a), 5334(a), 5402, 7701(b)(2), and section 203 of E.O. 11721, as amended; subpart C also issued under 5 U.S.C. 5333(b) and section 404 of E.O. 11721, as amended; subpart D also issued under 5 U.S.C. 5301, 5335, 7701(b)(2), and section 402 of E.O. 11721, as amended; subpart E also issued under 5 U.S.C. 5336 and section 403 of E.O. 11721, as amended.

2. In § 531.203, paragraph (d)(2) is amended by removing the word "or" at the end of paragraph (d)(2)(v); redesignating paragraph (d)(2)(vi) as (d)(2)(vii); and adding a new paragraph (d)(2)(vi), to read as follows:

§ 531.203 General provisions.

* * * * *

(d) * * *

(2) * * *

(vi) A rate received solely during a period of interim relief under the interim relief provisions of 5 U.S.C. 7701(b)(2)(A); or

* * * * *

3. In § 531.406, the second sentence of paragraph (a) is revised to read as follows:

§ 531.406 Creditable service.

(a) *General.* * * * Service credit is given during this employment for periods of annual, sick, and other leave with pay; advanced annual and sick leave; service under a temporary or term appointment; and service under an interim appointment made under § 772.102 of this chapter. * * *

4. In § 531.407, paragraph (c) is amended by removing the word "and" at the end of paragraph (c)(5); adding the word "and" at the end of paragraph (c)(6); and adding a new paragraph (c)(7), to read as follows:

§ 531.407 Equivalent increase determinations.

* * * * *

(c) * * *

(7) An interim within-grade increase terminated under § 531.414(c) of this part.

* * * * *

5. A new § 531.414 is added, to read as follows:

§ 531.414 Interim within-grade increase.

(a) An interim within-grade increase shall be granted to an employee who has:

(1) Appealed a negative within-grade increase determination to the Merit Systems Protection Board under 5 U.S.C. 5335(c); and

(2) Been granted a favorable within-grade increase determination under the interim relief provisions of 5 U.S.C. 7701(b)(2).

(b) An interim within-grade increase granted under paragraph (a) of this section shall become effective on the first day of the first pay period beginning on or after the date of the favorable within-grade increase determination.

(c) If the final decision of the Merit Systems Protection Board upholds the negative within-grade increase determination, an interim within-grade increase granted under this section shall be terminated at the end of the pay period in which the Board's decision becomes final.

(d) If the final decision of the Merit Systems Protection Board overturns the negative within-grade increase determination, an interim within-grade increase granted under this section shall be made permanent and shall be granted retroactively to the first day of the first pay period beginning on or after completion of the applicable waiting period.

(e) An employee may not appeal the termination of an interim within-grade increase under paragraph (c) of this section.

PART 536—GRADE AND PAY RETENTION

1. The authority citation of part 536 is revised to read as follows:

Authority: 5 U.S.C. 5361–5366 and 7701(b)(2); § 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. In § 536.202, a new paragraph (c) is added, to read as follows:

§ 536.202 Period of grade retention.

* * * * *

(c) Notwithstanding § 536.207(a)(1) of this part, grade retention shall continue to apply to an employee serving under an interim appointment made under § 772.102 of this chapter for the duration of the original 2-year period if the employee's grade was retained under this part in the appointment immediately preceding the interim appointment.

3. In § 536.205, paragraph (f) is redesignated as (g) and a new paragraph (f) is added, to read as follows:

§ 536.205 Determination of rate of basic pay.

* * * * *

(f) Notwithstanding § 536.209(a)(1) of this part, pay retention shall continue to apply to an employee serving under an interim appointment made under § 772.102 of this chapter if the employee's pay was retained under this part in the appointment immediately preceding the interim appointment.

OPM proposes to add a new part 772 to title 5 of the Code of Federal Regulations to read as follows:

PART 772—INTERIM RELIEF

Subpart A—General

Sec.
772.101 Purpose.
772.102 Interim Personnel Actions.

Authority: 5 U.S.C. 1302, 3301, 3302, and, 7301; Pub. L. 101–12.

Subpart A—General

§ 772.101 Purpose.

This part establishes a mechanism for agencies to provide interim relief to employees who prevail in an initial decision issued by the Merit Systems Protection Board as required by the *Whistleblower Protection Act of 1989,*

Public Law 101–12 (codified at 5 U.S.C. 7701(b)(2)(A)).

§ 772.102 Interim personnel action

When an employee or applicant for employment appeals an action to the Merit Systems Protection Board and the appeal results in an initial decision by an MSPB administrative judge granting interim relief under 5 U.S.C. 7701(b)(2)(A), the agency shall provide the relief ordered in the initial decision by taking an interim personnel action subject to the following terms:

(a) Interim personnel actions, except interim within-grade increases under § 531.414 of this chapter, shall be made effective upon the date of issuance of the initial decision;

(b) The relief provided by interim personnel actions shall end:

(1) When the full Board issues a final decision pursuant to the agency's or employee's petition for review filed under 5 U.S.C. 7701(e)(1)(A),

(2) When the initial decision becomes final pursuant to both the agency's and employee's decision not to petition for review under 5 U.S.C. 7701(e)(1)(A), or

(3) When the employee voluntarily requests or reaches agreement with the agency that the interim relief ordered in the initial decision be cancelled;

(c) Interim relief shall entitle the employee to the same compensation and benefits he or she would receive if the relief effected had not been on an interim basis except as provided in paragraph (f) of this section;

(d) Upon the taking of an interim personnel action, the agency shall place the employee in a paid, duty status, unless the agency determines that the return or presence of the employee would be unduly disruptive to the work environment, whereupon the agency may place the employee in a paid, non-duty status (with the employee receiving the same compensation and benefits he or she would be entitled to if in an interim relief duty status) during the pendency of a petition for review to the full Board under 5 U.S.C. 7701(e)(1)(A) or until the decision granting interim relief becomes final under 5 U.S.C. 7701(e)(1)(A);

(e) An interim personnel action shall not be taken if the MSPB administrative judge, pursuant to 5 U.S.C. 7701(b)(2)(A)(i), determines that granting interim relief is not appropriate;

(f) An interim personnel action under this part shall not entitle the employee to an award of back pay or attorney fees; and

(g) The agency shall follow the instructions in Federal Personnel Manual Supplement 296–33 and Federal Personnel Manual chapter 296 in taking an interim personnel action.

PART 831—RETIREMENT

1. The authority citation for subpart B of part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2).

2. In § 831.201, paragraph (b)(6) is added as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) * * *

(6) The employee receives an interim appointment under § 772.102 of this chapter and was covered by CSRS at the time of the separation for which interim relief is required.

* * * * *

3. In subpart H, a new § 831.805 is added to read as follows:

§ 831.805 Effect of part 772 of this chapter on CSRS annuity benefits.

(a) *Agency notification to OPM.* (1) When it is determined that a CSRS retiree is to be given interim relief under 5 U.S.C. 7701(b)(2)(A), the employing agency must notify OPM of the effective date of the interim appointment under § 772.102 of this chapter.

(2) Upon receiving a final MSPB order requiring cancellation of the retiree's separation or after the retiree and the agency voluntarily agree to cancel the separation, the employing agency must notify OPM and request the amount of the erroneous payment to be recovered under § 550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(b) *Suspension of annuity payments during the appointment.* Except as provided in paragraph (d)(4) of this section, the provisions of 5 U.S.C. 8344 will not apply while the retiree is employed in an interim appointment under § 772.102 of this chapter. In all cases, OPM will suspend the retiree's annuity effective on the commencing date of the interim appointment. The suspension will last until the interim appointment ends.

(c) *Employee deductions and agency contributions.* For the duration of the interim appointment, the agency will withhold the appropriate employee deduction and contribute the matching agency contribution as prescribed by OPM.

(d) *Overpaid retirement benefits.* (1) An overpayment of CSRS retirement benefits resulting from the action which led to the interim appointment under § 772.102 of this chapter will be determined when the MSPB initial decision overturning the employee's separation becomes final, when the Board issues a final order cancelling the separation, or when the agency voluntarily agrees to cancel the separation.

(2) If OPM determines that an overpayment has ocurred and the employee is entitled to receive back pay because of the cancelled separation, the overpaid retirement benefits must be deducted to the extent they can be recovered from the back pay adjustment as required by 5 CFR 550.805(e).

(3) Amounts recovered from back pay will not be subject to waiver consideration under the provisions of 5 U.S.C. 8346(b). If there is no back pay or the back pay is insufficient to recover the entire erroneous payment, the employee may request that OPM waive the uncollected portion of the overpayment. If waiver is not granted, the employee must repay the erroneous payment.

(4) If the MSPB action does not result in cancellation of the separation, the retiree may apply for any additional benefits for which he or she qualifies under the provisions of 5 U.S.C. 8344.

(e) *Resumption of annuity payments.* If the retiree voluntarily withdraws his or her objection to the separation or MSPB issues a final order sustaining the retiree's separation, the employing agency must notify OPM of the date the interim appointment ends so that annuity payments may be resumed. OPM will resume payments effective the day after the interim appointment ends.

4. In subpart T, a new § 831.2011 is added to read as follows:

§ 831.2011 Effect of part 772 of this chapter on CSRS lump-sum payments.

(a) An interim appointment under § 772.102 of this chapter does not affect the lump-sum payment of retirement contributions made to a separated employee unless it becomes effective within 31 days of the employee's separation from the service. An interim appointment effective within 31 days of the employee's separation makes the employee ineligible for the lump-sum payment. Payments made in error will be collected under subpart M of part 831 of this chapter.

(b) When an employee's separation is cancelled after the MSPB initial decision becomes final, when the Board issues a final order cancelling the employee's separation, or when the agency and the employee agree to cancel the separation, the agency must notify OPM and request the amount of the erroneous lump-sum payment.

(c) At the time the employee's separation is cancelled, the agency must deduct the amount of the lump-sum payment from any back pay to which the employee is entitled as required by 5 CFR 550.805(e).

(d) Amounts recovered from back pay will not be subject to waiver consideration under 5 U.S.C. 8346(b). If there is no back pay or the back pay is insufficient to recover the erroneous payment, the employee may request that OPM waive the recovery of the uncollected portion of the overpayment. if waiver is not granted, the employee must repay the erroneous payment.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for subpart E of part 841 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); § 841.504 also issued under 5 U.S.C. 8522; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.508 also issued under section 505 of Pub. L. 99–335.

2. In part 841, subpart E is revised by redesignating §§ 841.506 and 841.507 as §§ 841.507 and 841.508, respectively, and adding a new § 841.506 to read as follows:

§ 841.506 Effect on part 772 of this chapter on FERS payments.

(a) *Agency notification to OPM.* (1) When it is determined that a FERS employee is to be given interim relief under 5 U.S.C. 7701(b)(2)(A), the employing agency must notify OPM of the effective date of the interim appointment under § 772.102 of this chapter.

(2) When the MSPB initial decision cancelling the employee's separation becomes final, when the Board issues a final order cancelling the retiree's separation, or when the agency voluntarily agrees to cancel the separation, the employing agency must notify OPM of the date the interim appointment ends and request the amount of the erroneous payment to be recovered under § 550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(b) *Suspension of annuity payments during the appointment.* Except as provided in paragraph (d)(2) of this section, the provisions of 5 U.S.C. 8468 will not apply while the retiree is employed in an interim appointment under § 772.102 of this chapter. In all cases, OPM will suspend the retiree's annuity effective on the commencing date of the interim appointment. The suspension will last until the interim appointment ends.

(c) *Employee deductions and normal cost percentage.* For the duration of the appointment, the agency will withhold the appropriate employee deduction and contribute the total amount of the normal cost percentage for the employee as prescribed by OPM. If and when a separation action is cancelled, the agency must make the corrections specified under § 841.507 of this subpart.

(d) *Overpaid retirement benefits.* (1) An overpayment of FERS benefits resulting from the action which led to the interim appointment under § 772.102 of this chapter will be determined when the initial MSPB decision cancelling the separation action becomes final, when the Board issues a final order cancelling the separation of the retiree, or when the agency voluntarily agrees to cancel the separation.

(2) If the MSPB action does not result in cancellation of the separation, the retiree may apply for additional benefits under 5 U.S.C. 8468 for which he or she qualifies based on the service performed during the interim appointment.

(e) *Resumption of annuity payments.* If the retiree voluntarily agrees to the separation or MSPB issues a final order sustaining the retiree's separation, the employing agency must notify OPM of the date the interim appointment ends so that annuity payments may be resumed. OPM will resume annuity payments effective the day after the interim appointment ends.

3. In newly redesignated § 841.507, a new paragraph (d) is added to read as follows:

§ 841.507 Correction of unjustified or unwarranted personnel action.

* * * * *

(d)(1) Any FERS benefits—lump-sum payments or annuity benefits—paid based on a separation that is later cancelled are considered erroneous payments that must be repaid to OPM. Agencies must deduct such payments from any back pay adjustment to which the employee may be entitled as required by 5 CFR 550.805(e).

(2) Amounts recovered from back pay will not be subject to waiver consideration under 5 U.S.C. 8470(b). If there is no back pay, or the back pay is insufficient to recover the entire erroneous payment, the employee may request that OPM waive recovery of the uncollected portion of the overpayment. If waiver is not granted, the employee must repay the erroneous payment.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

1. The authority citation for subpart A of part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461; § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 5 U.S.C. 8402(c)(1).

2. Section 842.105 is amended by adding a new paragraph (c) to read as follows:

§ 842.105 Regulatory exclusions.

* * * * *

(c) Paragraph (a) of this section does not deny FERS coverage to an employee who receives an interim appointment under § 772.102 of this chapter and was covered by FERS at the time of the separation for which interim relief is required.

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for part 846 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); § 846.201(b) also issued under 5 U.S.C. 7701(b)(2); § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335.

2. Section 846.201(b) is revised to read as follows:

Subpart B—Elections

§ 846.201 Elections to become subject to FERS.

(b) *Separated employees who are reemployed.* A former employee who, after June 30, 1987, becomes reemployed and subject to CSRS may elect, during the 6-month period beginning on the date he or she becomes subject to CSRS, to become subject to FERS, except that an employee serving under an interim appointment under the authority of § 772.102 of this chapter is not eligible to elect to become subject to FERS.

PART 870—BASIC LIFE INSURANCE

1. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; § 870.202(c) also issued under 5 U.S.C. 7701(b)(2).

2. In § 870.202, a new paragraph (c) is added to read as follows:

§ 870.202 Exclusions.

* * * * *

(c) Paragraph (a) of this section does not deny coverage to an employee serving under an interim appointment established under § 772.102 of this chapter.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104, 5 U.S.C. 7701(b)(2) and Pub. L. 100–654; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 Stat. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744; subpart K also issued under title II of Pub. L. 100–654.

2. In § 890.102, paragraph (d) is revised to read as follows:

§ 890.102 Coverage.

* * * * *

(d) Paragraph (c) of this section does not deny coverage to: (1) An employee appointed to perform "part-time career employment," as defined in section 3401(2) of title 5, United States Code and 5 CFR part 340, subpart B; or

(2) An employee serving under an interim appointment established under § 772.102 of this chapter.

* * * * *

[FR Doc. 91–2396 Filed 2–4–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, 1094, 1096, and 1108

[Docket No. AO–366–A31, etc.; DA–90–020]

Milk in the Georgia and Certain Other Marketing Areas; Notice of Postponement of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR	Marketing area	AO Nos.
1007	Georgia	AO–366–A31.
1093	Alabama-West Florida.	AO–386–A9.
1094	New Orleans-Mississippi.	AO–103–A51.
1096	Greater Louisiana	AO–257–A38.
1108	Central Arkansas	AO–243–A41.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of postponement of public hearing on proposed rulemaking.

SUMMARY: This notices an indefinite postponement of a public hearing to consider a proposal by five cooperative associations and two dairy processors to amend the above-listed Federal milk marketing orders. A proposal by Dairymen, Inc.; Associated Milk Producers, Inc.; Gulf Coast Dairymen's Association; Gulf Dairy Association; and Southern Milk Sales, Inc., would merge the marketing areas of the Georgia, Alabama-West Florida, New Orleans-Mississippi and Greater Louisiana milk orders into a single marketing area. The hearing, which was initially scheduled to begin December 17, 1990, was postponed indefinitely to comply with a temporary restraining order issued by the United States District Court for the Middle District of Alabama-Northern Division on December 12, 1990, and a preliminary injunction issued by said Court on December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing: Issued October 19, 1990; published October 25, 1990 (55 FR 42969).

A notice was issued October 19, 1990 (55 FR 42969) giving notice of a public hearing to be held beginning December 17, 1990, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the Georgia, Alabama-West Florida, New Orleans-Mississippi, Greater Louisiana, and Central Arkansas marketing areas.

Notice is hereby given pursuant to the rules of practice applicable to these proceedings (7 CFR part 900) that the said hearing was postponed indefinitely to comply with a temporary restraining order issued by the United States District Court for the Middle District of Alabama-Northern Division on December 12, 1990, and a preliminary injunction issued by said court on December 28, 1990. Litigation of this matter is continuing.

List of Subjects in 7 CFR Parts 1007, 1093, 1094, 1096, and 1108

Milk marketing orders.

The authority citation for 7 CFR parts 1007, 1093, 1094, 1096, and 1108 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: January 31, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–2694 Filed 2–4–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1980

Termination of Interest Accrual on FmHA Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations and forms to terminate interest accrual on guaranteed loans effective 90 days from the approval of a liquidation plan by FmHA. The intended effect of the proposed change is to minimize the accrual of interest to lenders when the accrual could be avoided by paying estimated loss claims early in the liquidation process. Estimated reports of loss will be filed early in the liquidation process. FmHA's payment of an estimated loss to a lender will terminate interest accrual on the guaranteed loan for the purpose of computing a loss payment. Excess interest collected by the lender will be applied to the entire debt. The change will require lenders to remit to FmHA at final loss any amounts overpaid the lender on an estimated loss. Interest will cease to accrue on guaranteed loans held by lenders as of a certain date even if the lender fails to submit the estimated report of loss. Those lenders who are currently approved lenders will continue to process and service Farmer Programs guaranteed loans in accordance with their existing Approved Lender Agreement. A new Approved Lender Agreement (as revised) will be executed with all new approved lenders and with all lenders who reapply and receive approved lender status upon the expiration of their existing Approved Lender Agreement.

DATES: Written comments must be received on or before March 7, 1991.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention:

Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carolyn C. Parker, Branch Chief, Loan Servicing, Business and Industry Division, Farmers Home Administration, USDA, Washington, DC 20250, Telephone (202) 475-3802.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major. This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.422, Business and Industrial Loans; 10.406, Farm Operating Loans; 10.407, Farm Ownership Loans; and 10.416, Soil and Water Loans, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3105, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 7 CFR Part 1980

Loan program—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development.

Accordingly, title 7, chapter XVIII, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Pub. L. 100-387; Pub. L. 101-82; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. Section 1980.11 is revised to read as follows:

§ 1980.11 Full faith and credit.

The Loan Note Guarantee and Contract of Guarantee constitute obligations supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee, Contract of Guarantee, or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by the holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee or Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 449-14, "Conditional Commitment for Guarantee," or Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee/Contract of Guarantee shall not cover interest accruing to the lender 90 days after the approval by FmHA of the liquidation plan in accordance with Form FmHA 449-35, "Lender's Agreement;" Form FmHA 1980-38, "Lender's Agreement (Line of Credit);" Attachment 1 to Exhibit A of subpart B of part 1980 of this chapter, Approved Lender Program (ALP) Lender's Agreement (Loan Note Guarantee Only); and Attachment 2 to Exhibit A of subpart B of part 1980 of this chapter, Approved Lender Program (ALP) Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases). The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of debt for repurchase.

3. Section 1980.64 is amended by adding paragraphs (d) and (e) to read as follows:

§ 1980.64 Liquidation.

* * * * *

(d) *Final loss payment.* If the final report of loss shows a balance due to FmHA upon approval by FmHA of the final report of loss, the lender shall remit this amount to FmHA plus interest at the note rate from the date of payment of the estimated report of loss. If the final report of loss shows an amount due to the lender, the final loss settlement will include interest on the amount of the underpayment not to exceed the maximum allowable interest for 90 days from FmHA's approval of the lender's liquidation plan.

(e) *Maximum amount of interest loss payment.* Notwithstanding any other provision of this agreement, the amount payable by FmHA to the lender cannot exceed the limits set forth in the Loan Note Guarantee or the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. When a lender files an estimated loss claim, and the claim has been approved by FmHA, the lender will discontinue interest accrual on the defaulted loan for purposes of computing losses under the Loan Note Guarantee or Contract of Guarantee.

The balance of accrued interest (including any loan subsidy) payable to the lender, if any, will be calculated on the final report of loss form. In no case shall interest accrue beyond 90 days after the approval by FmHA of the lender's liquidation plan except for protective advances. *Provided,* however, interest accruing on approved protective advances made after approval of the liquidation plan shall continue to be covered by the guarantee until paid and will be included in the calculations of any final loss claim if not paid sooner. When a borrower files bankruptcy, see section XVI, Bankruptcy, of Form FmHA 449–35, "Lender's Agreement." If bankruptcy is filed, interest accruing 30 days after approval of an estimated loss shall not be covered by the guarantee of FmHA and shall not be included in any final report of loss.

4. Appendix A of subpart A is amended by revising paragraph B. 2. and paragraph 3. entitled "Full Faith and Credit," to read as follows:

Appendix A—Form FmHA 449–34, "Loan Note Guarantee"

* * * * *

B. * * *

2. The guaranteed principal, advanced to or assumed by the borrower under said note(s) or assumption agreement(s), and any interest due (including any loan subsidy) thereon.

If FmHA conducts the liquidation of the loan, loss occasioned to a lender by accruing interest (including any subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If the lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee for a period not to exceed 90 days from the date FmHA approves the lender's liquidation plan or FmHA approves and estimated loss claim, whichever comes first.

* * * * *

3. *Full Faith and Credit.*—The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 449–14, "Conditional Commitment for Guarantee." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee shall not cover interest accruing to the lender 90 days after FmHA approves the lender's liquidation plan in accordance with Form FmHA 449–35, "Lender's Agreement;" or Attachment 1 to Exhibit A of subpart B of 7 CFR, part 1980, Approved Lender Program (ALP) Lender's Agreement (Loan Note Guarantee Only). The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of debt for repurchase.

* * * * *

5. Appendix B of subpart A is amended by revising paragraph II., the introductory text of paragraph X. A., XI. and XI. A., and paragraphs XI. E. 2. and XI. F. to read as follows:

Appendix B—Form FmHA 449–35, "Lender's Agreement"

* * * * *

II. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by the holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender.

The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 449–14, "Conditional Commitment for Guarantee." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee shall not cover interest accruing to the lender 90 days after FmHA approves the lender's liquidation plan. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accuring 90 days after the lender or FmHA has requested the holder to surrender the evidence of debt for repurchase.

* * * * *

X. *Default.* A. The lender will notify FmHA when a borrower is 30 days (90 days for a guaranteed rural housing loan) past due on a payment or if the borrower has not met its responsibilities of providing the required financial statements to the lender or is otherwise in default. The lender will notify FmHA of the status of a borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged within 30 days of notification to FmHA of the borrower's default by the lender with the borrower and FmHA to resolve the problem. Actions taken by the lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

* * * * *

XI. *Liquidation.* If the lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the lender with FmHA. The meeting will be held within 30 days of the lender's notification to FmHA of the borrower's default. When FmHA concurs with the lender's conclusion or at any time concludes independently that liquidation is necessary, FmHA will notify the lender and the matter will be handled as follows:

A. Lender's proposed method of liquidation. Within 30 days after FmHA's concurrence in the lender's decision to liquidate, the lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

* * * * *

E. * * *

2. When the lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the lender provided the lender applies such

amount due to the outstanding balance owed on the guaranteed debt in accordance with paragraph G of this section. Such estimate will be prepared and submitted by the lender on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. If it appears the liquidation period will exceed 90 days, the lender will file an estimated loss claim. The lender will submit an estimated loss claim within 30 days of FmHA's concurrence in the lender's proposed liquidation plan. If the lender fails to submit an estimated loss claim within 30 days of FmHA's approval of the liquidation plan, the lender will be notified in writing and FmHA will submit an estimated loss claim based on the Agency's calculations. When a borrower files bankruptcy, see section XVI, *Bankruptcy*, of Form FmHA 449–35, "Lender's Agreement." If bankruptcy is filed, interest accruing 30 days after approval of an estimated loss shall not be covered by the guarantee of FmHA and shall not be included in any final report of loss.

When one note or more than one note has been issued, once the estimated loss claim is approved by FmHA, (including cases when FmHA completes the estimated loss claim), the lender will discontinue interest accrual on the guaranteed portion of the defaulted loan except for authorized protective advances; *Provided*, however, interest accruing on approved protective advances made after approval of the liquidation plan shall continue to be covered by the guarantee until paid and will be included in the calculation of any final loss claim if not paid sooner for purposes of computing losses under the Loan Note Guarantee and the loss claim will be promptly processed in accordance with the applicable FmHA regulations. Interest amounts collected by the lender in excess of the maximum interest to be covered by the guarantee will be applied to the guaranteed loan debt as provided by FmHA.

Within 30 days after the report of loss estimate has been approved by FmHA, FmHA will send the original report of loss estimate to the FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the lender to FmHA. Upon completion of the final report of loss the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained resulted in an overpayment to the lender, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss. If the actual loss sustained resulted in an underpayment to the lender, the final loss settlement will include interest on the amount of the underpayment not to exceed the maximum allowable interest 90 days from FmHA's approval of the lender's liquidation plan.

* * * * *

F. Maximum amount of interest loss payment. Notwithstanding any other provision of this agreement, the amount payable by FmHA to the lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. When the lender files an estimated loss claim, and the claim has been approved by FmHA, the lender will discontinue interest accrual on the defaulted loan, or on the guaranteed portion of the defaulted loan, whichever is applicable, for purposes of computing losses under the Loan Note Guarantee. The balance of accrued interest (including any loan subsidy) payable to the lender, if any, will be calculated on the final report of loss form. In no case shall interest accrue beyond 90 days after FmHA's approval of the liquidation plan.

* * * * *

6. Appendix D of subpart A is amended by revising paragraph 2. beginning with the words, "the guaranteed principal * * *" and paragraph 3. entitled, "Full Faith and Credit," to read as follows:

Appendix D—Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)"

* * * * *

2. The guaranteed principal advanced to or assumed by the borrower under said line of credit agreement(s) (and note(s) if any exist) or assumption agreements(s) and any interest due thereon.

If an operating loan line of credit is involved, advances under than line of credit must be made within 3 years from the date of this Contract of Guarantee. Advances made after that date will not be covered by this Contract of Guarantee. If FmHA conducts the liquidation of the loan, loss occasioned to a lender by accruing interest after the date FmHA accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If the lender conducts the liquidation of the line of credit, interest accruing to the lender shall be covered by this Contract of Guarantee for a period not to exceed 90 days from the date FmHA approves the lender's liquidation plan or the date FmHA approves an estimated loss claim, whichever comes first.

* * * * *

3. Full Faith and Credit

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge of at the time it became such lender or which lender participates in or condones. If the line of credit to which this Contract of Guarantee is attached provides for the payment of interest on interest, this Contract of Guarantee is void. In addition, the Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Contract of Guarantee shall not cover interest accruing to the lender 90 days after FmHA approves the lender's liquidation plan in accordance with Form FmHA 1980–38, "Lender's Agreement (Line of Credit)," or as set forth in Attachment 2 to Exhibit A of subpart B of 7 CFR, part 1980, Approved Lender Program (ALP) Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases).

* * * * *

7. Appendix E of subpart A is amended by revising paragraphs II. and X. A., the introductory text of paragraphs XI., XI. A. and XI. B., paragraphs XI. E. 2. and XI. F. to read as follows:

Appendix E—Form FmHA 1980–38, "Lender's Agreement (Line of Credit)"

* * * * *

II. *Full Faith and Credit.* The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or which lender participates in or condones. Any line of credit agreement which provides for the payment of interest on interest shall not be guaranteed. Any Contract of Guarantee attached to or relating to the line of credit agreement which provides for payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not

acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Contract of Guarantee shall not cover interest accruing to the lender 90 days after FmHA's approval of the lender's liquidation plan.

* * * * *

X. *Default.* A. The lender will notify FmHA when a borrower is 30 days past due on a payment or if the borrower has not met its responsibilities of providing the required financial statements to the lender or is otherwise in default. The lender will notify FmHA of the status of a borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged within 30 days of notification to FmHA of the borrower's default by the lender with the borrower and FmHA to resolve the problem. Actions taken by the lender with written concurrence of FmHA may include but are not limited to the following or any curative actions contained in either subpart B, C, or F as applicable, or liquidation.

* * * * *

XI. *Liquidation.* If the lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the lender with FmHA. The meeting will be held within 30 days of the lender's notification to FmHA of the borrower's default. When FmHA concurs with the lender's conclusion or at any time concludes independently that liquidation is necessary, FmHA will notify the lender and the matter will be handled as follows:

* * * * *

A. Lender's proposed method of liquidation. Within 30 days after FmHA's concurrence in the lender's decision to liquidate, the lender will advise FmHA in writing of its proposed detailed method of liquidation, called a liquidation plan, and will provide FmHA with:

* * * * *

B. FmHA's response to lender's liquidation proposal. FmHA will inform the lender in writing whether it concurs in the lender's proposed method of liquidation within 30 days after receipt of such notification from the lender. If FmHA needs additional time to respond to the liquidation plan, FmHA will advise the lender of a definite time for such response. Should FmHA and the lender not agree on the lender's liquidation proposal, negotiation will take place between FmHA and the lender to resolve the disagreement. The lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

* * * * *

E. * * *

2. When the lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the lender provided the lender applies such amount due to the outstanding balance owed on the guaranteed debt in accordance with paragraph G of this section. Such estimate will be prepared and submitted by the lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. If it appears the liquidation period will exceed 90 days, the lender will file an estimated loss claim. The lender will submit the estimated loss claim within 30 days of FmHA's concurrence in the lender's proposed liquidation plan. If the lender fails to submit an estimated loss claim with 30 days of FmHA's approval of the liquidation plan, the lender will be notified in writing and FmHA will submit an estimated loss claim based on the Agency's calculations. When a borrower files bankruptcy, see section XVI, *Bankruptcy,* of Form FmHA 1980–38, "Lender's Agreement (Line of Credit)." If bankruptcy is filed, interest accruing 30 days after approval of an estimated loss shall not be covered by the guarantee of FmHA and shall not be included in any final report of loss. When one note or more than one note has been issued once the estimated loss claim is approved by FmHA (including cases when FmHA completes the estimated loss claim), the lender will discontinue interest accural on the defaulted loan (except for authorized protective advances; Provided, however, interest accruing on approved protective advances made after approval of the liquidation plan shall continue to be covered by the guarantee until paid and will be included in the calculation of any final loss claim if not paid sooner) for purposes of computing losses under the Contract for Guarantee, and the loss claim will be promptly processed in accordance with the applicable FmHA regulations. Interest amounts collected by the lender in excess of the maximum amount to be covered by the guarantee will be applied to the guaranteed loan debt as provided by FmHA.

Within 30 days after the report of loss estimate has been approved by FmHA, FmHA will send the original report of loss estimate to the FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the lender to FmHA. Upon completion of the final report of loss the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained resulted in an overpayment to the lender, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss. If the actual loss sustained resulted in an underpayment to the lender, the final loss settlement will include interest on the amount of the underpayment not to exceed the maximum allowable interest 90 days from FmHA's approval of the lender's liquidation plan.

* * * * *

F. Maximum amount of interest loss payment. Notwithstanding any other provision of this agreement, the amount payable by FmHA to the lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. When the lender files an estimated loss claim, and the claim has been approved by FmHA, the lender will discontinue interest accrual on the defaulted loan, or on the guaranteed portion of the defaulted loan, whichever is applicable, for purposes of computing losses under the Loan Note Guarantee. The balance of accrued interest (including any loan subsidy) payable to the lender, if any, will be calculated on the final report of loss form. In no case shall interest accrue beyond 150 days after the date of the decision by the lender and FmHA to liquidate the guaranteed debt without the prior written authorization of FmHA. FmHA may grant an extension of time when it is established that the loan is unlikely to remain in liquidation status, there is an underpayment on the estimated loss, or reliable appraisals cannot be obtained. FmHA may also consider such factors as uncertainties caused by litigation, extended redemption periods, or other comparable factors beyond the control of the lender.

* * * * *

Subpart B—Farmer Program Loans

8. Section 1980.145 is amended by revising paragraph (b) to read as follows:

§1980.145 Defaults by borrower.

* * * * *

(b) The lender will prepare current financial information, including a cash flow, and will schedule a meeting with the County Supervisor and the borrower within 30 days of notification to FmHA of the borrower's default to discuss possible solutions including interest rate buydown to resolve the borrower's financial problems. The lender must notify the County Supervisor of the meeting at least 10 working days in advance. At least 10 working days prior to the meeting, the County Supervisor will mail exhibit D and Attachment 1 of this subpart to the lender and the borrower.

* * * * *

9. Section 1980.146 is amended by redesignating current paragraph (c) as paragraph (d), by revising paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 1980.146 Liquidation.

* * * * *

(b) *Determination of loss and payment.* In all liquidation cases, final settlement will be made with the lender in accordance with § 1980.64 of subpart A of this part.

(1) Form FmHA 449–30 will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the lender has submitted a liquidation plan approved by FmHA. Payments will be made in accordance with applicable FmHA regulations.

(2) When the lender is conducting the liquidation, it may request a tentative loss estimate by submitting the FmHA an estimate of loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the lender provided the lender applies such amount due to the outstanding balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. If it appears the liquidation period will exceed 90 days, the lender will file an estimated loss claim within 30 days after FmHA's concurrence in the lender's proposed liquidation plan. If the lender fails to submit an estimated loss claim within 30 days of FmHA's approval of the liquidation plan the lender will be notified in writing and FmHA will submit an estimated loss claim based on the Agency's calculations. Once the estimated loss claim is approved by FmHA, including cases when FmHA completes the estimated loss claim, the lender will discontinue interest accrual on the defaulted loan, except from authorized protective advances, for purposes of computing losses under the Loan Note Guarantee or the Contract of Guarantee and the loss claim will be promptly processed in accordance with the applicable FmHA regulations. Within 30 days after the report of loss estimate has been approved by FmHA, FmHA will send the original report of loss estimate to the FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the lender. After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the lender to FmHA. Upon completion of the final report of loss the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained resulted in an overpayment to the lender, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss. If the actual loss sustained resulted in an underpayment to the lender, the final loss settlement will include interest on the amount of the underpayment not to exceed the maximum allowable interest 90 days from FmHA's approval of the lender's liquidation plan.

(3) After the lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final report of loss it will investigate the matter. The lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final report of loss to be proper in all respects, the final report of loss will be tentatively approved in the space provided on the form for that purpose.

(4) When the lender has conducted liquidation and after the final report of loss has been tentatively approved:

(i) If the loss is greater than the estimated payment, FmHA will send the original final report of loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the lender.

(ii) If the loss is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

(5) If FmHA has conducted liquidation, it will provide an accounting and report of loss to the lender and will pay the lender in accordance with the Loan Note Guarantee.

(6) In those instances where the lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made at FmHA when the final report of loss is approved.

(c) *Maximum amount of interest loss payment.* Notwithstanding any other provision of this agreement, the amount payable by FmHA to the lender cannot exceed the limits set forth in the Loan Note Guarantee or the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. When the lender files an estimated loss claim, and the claim has been approved by FmHA, the lender will discontinue interest accrual on the defaulted loan for purposes of computing losses under the Loan Note Guarantee or Contract of Guarantee. The balance of accrued interest (including any loan subsidy) payable to the lender, if any, will be calculated on the final report of loss form. In no case shall interest accrue to the lender beyond 90 days after FmHA approves the lender's liquidation plan except for protective advances; *Provided*, however, interest accruing on approved protective advances made after approval of the liquidation plan shall continue to be covered by the guarantee until paid and will be included in the calculation of any final loss claim if not paid sooner. When a borrower files bankruptcy, see section XVI, *Bankruptcy*, of Form FmHA 449–35, "Lender's Agreement" or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)." If bankruptcy is filed, interest accruing 30 days after approval of an estimated loss shall not be covered by the guarantee of FmHA and shall not be included in any final report of loss.

* * * * *

10. Exhibit A, Attachment 1 of subpart B of part 1980 is revised to read as follows:

Exhibit A to Subpart B

Attachment 1

Farmers Home Administration Approved Lender Program (ALP) Lender's Agreement (Loan Note Guarantee Only) for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) Guaranteed Soil and Water Loans (SW)

_____

_____

(lender) of _____ is designated as an Approved Lender for the purpose of processing and requesting Loan Note Guarantee(s) authorized by Exhibit A to 7 CFR part 1980, subpart B. This does not apply to loan types other than those specifically named in this agreement. The agreement applies to the following offices of the lender: _____

The United States of America, acting through the Farmers Home Administration (FmHA), agrees to enter into Loan Note Guarantees with the lender as may be issued pursuant to the regulations for operating, soil and water, and/or farm ownership loans and to participate in a percentage of any loss on any such operating, soil and water, and/or farm ownership loan not to exceed the

amount established in the particular Loan Note Guarantee as the percentage of the amount of the principal and any accrued interest. The terms of any Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan(s), the lender enters into this Agreement.

The Parties Agree

I. The maximum loss covered under the Loan Note Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any operating, soil and water, and/or farm ownership loan guaranteed.

II. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it became such lender or which lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for the payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by the holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 449–14, "Conditional Commitment for Guarantee." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee shall not cover interest accruing to the lender 150 days after a decision has been made by FmHA and the lender to liquidate. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender of FmHA has requested the holder to surrender the evidence of debt for repurchase.

III. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The lender may retain all of any guaranteed loan. The lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or borrower or members of their immediate families, their officers, directors stockholders, other owners, or any parent, subsidiary, or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of any loan to one or more holders by using Form FmHA 449–36, "Assignment Guarantee Agreement." Holder(s), upon written notice to lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold under Form FmHA 449–36. Upon such notification the assignee shall succeed to all rights and obligations of the holder(s) under Form FmHA 449–36.

2. *Multinote System.* When this option is selected by the lender, upon disposition, the holder will receive one of the borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee," attached to the borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the lender and, in all cases, insure to its and the Government's benefit notwithstanding any contrary provisions of State law.

a. At Loan Closing: Provide for no more than 10 notes, unless the borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the lender with a Form FmHA 449–34 for each of the notes.

b. After Loan Closing: (1) Upon written approval by FmHA, the lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The borrower agrees and executes the new notes.

(b) The interest rate does not succeed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.

(e) There is adequate collateral securing the note(s).

VI. The lender will certify to FmHA, prior to the issuance of a Loan Note Guarantee for each loan, that there has been no adverse change(s) in the borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes and be supported by financial statements of the borrower and its guarantors not more than 90 days old at the time of certification. As used in this paragraph only, the term "borrower" includes any parent, affiliate, or subsidiary of the borrower.

VII. The lender will submit the required guaranteed fee with a Guaranteed Loan Closing Report at the time a Loan Note Guarantee is issued.

VIII. *Servicing.*

A. The lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portion of the loan. The lender may charge the holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are guaranteed.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction, and acquisitions.

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then exchanged for the original Loan Note Guarantee which will be cancelled by FmHA.

3. Participations.

a. The lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another lender.

b. The lender may obtain participation of only the unguaranteed portion of its loan in excess of the 10 percent minimum under its normal operating procedures. Participation means a sale of an interest in the loan in which the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation. Participation with a lender by any entity does not make that entity a holder or a lender.

B. When a guaranteed portion of a loan is sold by the lender to a holder(s), the holder(s) shall, upon the sale, succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lenders will remain bound to all the obligations under the Loan Note Guarantee, this agreement, the FmHA program regulations found in title 7 CFR, part 1980, subparts A and B, and to future FmHA program regulations not inconsistent with the express provisions of this Agreement.

IV. The lender agrees loan funds will be used for the purpose authorized in 7 CFR part 1980, subparts A and B as set forth in Form FmHA 449–14, for the particular loan.

V. The lender certifies that none of its officers, directors, stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System (FCS) institutions with direct lending authority that have normal stockshare requirements for participating), or other owners has, or will have, a substantial financial interest in any guaranteed loan borrower. The lender certifies that neither any guaranteed loan borrower nor its officers, directors, stockholders, or other owners have a substantial financial interest in the lender. If the borrower is a member of the board of directors of a Farm Credit Bank or other FCS institution with direct lending authority the lender certifies that an FCS institution on the next highest level will

independently process the loan request and will act as the lender's agent in servicing the account.

Only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided in this Agreement.

It is the lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses, or authorizations are obtained from the appropriate regulatory agencies; that the borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and the FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to: 1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and supplemental agreements, and notifying FmHA and the borrower, in writing, of any violations.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any holder(s) of their pro-rata share, thereof, determined according to their respective interests in the loan less only the lender's servicing fee. The loan may be reamortized, rescheduled, or written down only with agreement of the lender and holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring the adequate insurance is maintained. This includes hazard insurance obtained with a loss payable clause in favor of the lender as the mortgagor or secured party.

5. Assuring that: a. Taxes, assessments, or ground rents against or affecting collateral are paid;

b. The loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigaton;

c. Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

d. Proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures, may be used to acquire property of similar nature without written concurrence of FmHA;

e. The borrower complies with all laws and ordinances applicable to the loan, the collateral, and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such loan guarantors will be obtained which are not over 90 days old. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the borrower obtains marketable title to the collateral.

9. Assuring that the borrower (as defined in 7 CFR part 1980, subpart B, § 1980.106(b)(4)) is not released from liability for all or any part of the loan except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31, on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured borrower at least annually. The lender is responsible for analyzing the financial statements, taking any servicing actions, and providing copies of statements and record of action to the FmHA office upon request.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in 7 CFR part 1980, subpart G, exhibit M.

D. The lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR part 1980, subpart B, § 1980.126.

IX. *Default by Borrower.*

A. The lender will notify FmHA when a borrower is 30 days past due on a payment or if the borrower has not met its responsibilities of providing the required financial statements to the lender or is otherwise in default. The lender will notify FmHA of the status of a borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged within 30 days of notification of FmHA of the borrower's default by the lender with the borrower and FmHA to resolve the problem. Actions taken by the lender, with written concurrence of FmHA, will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments, subject to rights of any holder(s).

2. An additional temporary loan by the lender to bring the account current.

3. Reamortization or rescheduling of the payments of the loan, subject to rights of any holder(s).

4. Transfer and assumption of the loan.

5. Reorganization.

6. Liquidation.

7. Changes is fixed interest rates with FmHA's, the lender's, and the holder'(s') written approval; provided such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan.

8. Principal and interest writedown in accordance with 7 CFR part 1980, subpart B, § 1980.125.

B. The lender will negotiate in good faith in an attempt to resolve any problem to permit the borrower to cure a default, where reasonable. The lender agrees that if liquidation of the account becomes imminent, the lender will consider the borrower for an interest rate buydown under exhibit D of subpart B of 7 CFR, part 1980, and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown Program.

C. The lender has the option to repurchase the unpaid guaranteed portion of the loan from the holder(s) within 30 days of written demand by the holder(s) when: (a) The borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the lender has failed to remit to the holder(s) its pro-rata share of any payment made by the borrower within 30 days of its receipt of the payment. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder(s) upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The lender will notify the holder(s) and FmHA of its decision.

D. If the lender does not repurchase as provided by Paragraph C, FmHA will purchase from the holder(s) the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase within 30 days after written demand to FmHA from the holder(s). The Loan Note Guarantee will not cover the note interest to the holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the holder(s) to the lender requesting the repurchase. Such demand will include a copy of the written demand made upon the lender.

The holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of the holder(s). The holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. FmHA will verify the amount of unpaid principal and interest with the lender. Unless otherwise agreed to by FmHA, such proposed payment will not ordinarily be later than 30 days from the date of the demand to FmHA.

FmHA will promptly notify the lender of the holder'(s') demand for payment. The lender will promptly provide FmHA with the information necessary for FmHA's determination of the appropriate amount due the holder(s). Any discrepancy between the amount claimed by the holder(s) and the

information submitted by the lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and remit the check(s) to the holder(s).

E. The lender consents to the purchase by FmHA and agrees to furnish, on request by FmHA, a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount due the holder(s). The lender agrees that any purchase by FmHA does not change, alter, or modify any of the lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against the lender, and FmHA will have the right to set-off against the lender all rights inuring to FmHA from the holder against FmHA's obligation to the lender under the Loan Note Guarantee.

F. Servicing fees assessed by the lender to a holder are collectible only from payment installments received by the lender from the borrower. When FmHA repurchases from a holder, FmHA will pay the holder only the amounts due the holder. FmHA will not reimburse the lender for servicing fees assessed to a holder and not collected from payments received from the borrowers. No service fee shall be charged FmHA and no such fee is collectible from FmHA.

G. The lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

X. *Liquidation.* If the lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the lender with FmHA. The meeting will be held within 30 days of the lender's notification to FmHA of the borrower's default. When FmHA concurs with the lender's conclusion or at any time concludes independently that liquidation is necessary, FmHA will notify the lender and the matter will be handled as follows:

The lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the lender may proceed to purchase from the holder(s) the guaranteed portion of the loan. The holder(s) will be paid according to the provision in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro-rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after FmHA's concurrence in the lender's decision to liquidate, the lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, and advise as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The lender will obtain an independent appraisal report on all collateral securing the loan which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the lender.

B. FmHA's response to lender's liquidation plan. FmHA will inform the lender in writing whether it concurs in the lender's liquidation plan within 30 days after receipt of such plan from the lender. If FmHA needs additional time to respond to the liquidation plan, FmHA will advise the lender of a definite time for such response. Should FmHA and the lender not agree on the lender's liquidation plan, negotiation will take place between FmHA and the lender to resolve the disagreement. The lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Upon approval by FmHA of the lender's liquidation plan, the lender will submit an estimated loss within 30 days in accordance with paragraph X of this attachment.

D. Acceleration. The lender or FmHA, if FmHA liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration documents will be sent to FmHA or the lender, as the case may be.

E. Liquidation: Accounting and Reports. When the lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. The lender will transmit to FmHA any payment received from the borrower and/or pro-rata share of liquidation or other proceeds when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment." When FmHA liquidates, the lender will be provided with similar reports on request.

F. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculation of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR part 1980, subpart B.

2. When the lender is conducting the liquidation, it may request an estimated loss by submitting to FmHA an estimate of loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the lender provided the lender applies such amount due to the outstanding balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. If it appears the liquidation period will exceed 90 days, the lender will file an estimated loss claim within 30 days after FmHA's concurrence in the lenders' proposed liquidation plan. If the lender fails to submit an estimated loss claim within 30 days of FmHA's approval of the liquidation plan, the lender will be notified in writing, and FmHA will submit an estimated loss claim based on the Agency's calculations. When a borrower files bankruptcy, see section XVI, Bankruptcy, of Form FmHA 1980-38, "Lender's Agreement (Line of Credit)," or section XV Bankruptcy, of this agreement. If bankruptcy is filed, interest accruing 30 days after approval of an estimated loss shall not be covered by the guarantee of FmHA and shall not be included in any final report of loss. When one note or more than one note has been issued, once this estimated loss claim is approved by FmHA (including cases when FmHA completes the estimated loss claim), the lender will discontinue interest accrual on the defaulted loan except for protective advances; *Provided,* however, interest accruing on protective advances after approval of the liquidation plan shall continue to be covered by the guarantee until paid and will be included in the calculation of any final loss claim if not paid sooner) for purposes of computing losses under the Loan Note Guarantee, and the loss claim will be promptly processed in accordance with the applicable FmHA regulations. Interest amounts collected by the lender in excess of

the maximum interest to be covered by the guarantee will be applied to the guaranteed loan debt as provided by FmHA.

Within 30 days after the report of loss estimate has been approved by FmHA, FmHA will send the original report of loss estimate to the FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the lender to FmHA. Upon completion of the final report of loss the lender will provide FmHA with the documentation necessary to determine whether estimated loss paid equals loss sustained. If the actual loss sustained resulted in an overpayment to the lender, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss. If the actual loss sustained resulted in an underpayment to the lender, the final loss settlement will include interest on the amount of the underpayment from the time of approval of the estimated loss.

3. After the lender has completed liquidation, FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the report of loss, it will investigate the matter. The lender will make its records available to, and otherwise assist, FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final report of loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the lender has conducted liquidation and after the final report of loss has been tentatively approved: a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final report of loss to the Finance Office of issuance of a Treasury check in payment of the additional amount owed by FmHA to the lender.

b. If the loss is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and report of loss to the lender and will pay the lender in accordance with the Loan Note Guarantee.

6. In those instances where the lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provide above, and such payment will be made by FmHA when the final report of loss is approved.

G. Maximum amount of interest loss payment. Notwithstanding any other provision of this agreement, the amount payable by FmHA to the lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. When the lender files an estimated loss claim, and the claim has been approved by FmHA, the lender will discontinue interest accrual on the defaulted loan for purposes of computing losses under the Loan Note Guarantee. The balance of accrued interest (including any loan subsidy) payable to the lender, if any, will be calculated on the final report of loss form. In no case shall interest accrue beyond 150 days after the date of the decision by the lender and FmHA to liquidate the guaranteed debt without the prior written authorization of FmHA. FmHA may grant an extension of time when it is established that the loan is unlikely to remain in liquidation status, there is an underpayment on the estimated loss, or reliable appraisals cannot be obtained. FmHA may also consider such factors as uncertainties caused by litigation, extended redemption periods, or other comparable factors beyond the control of the lender.

H. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the lender on the guaranteed portion of the loan debt. However, such application does not release the borrower from liability. Such amounts are only to compensate the lender for the loss. (See XIII below.) In all cases, a final Form FmHA 449–30 prepared and submitted by the lender must be processed by FmHA in order to close out the files.

I. Income from collateral. Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

J. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the lender, with FmHA's written concurrence, to be protective advances. If circumstances have changed after submission of the liquidation plan which require a revision of liquidation costs, the lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

K. Payment. Final loss payments will be made within 30 days after the review of the accounting of the collateral.

XI. *Protective Advances.* Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not protective advances.

XII. *Additional Loans or Advances.* Except as provided for in each borrower's loan agreement, which was specifically approved by FmHA for that specific borrower, the lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIII. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the lender, will be pro-rated between FmHA and the lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XIV. *Transfer and Assumption Cases.* Refer to 7 CFR part 1980, subpart B.

If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor debtor (including personal guarantees) is released from personal liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss on Form FmHA 449–30 to recover its pro-rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA 449–30, lines 13 and 14.

XV. *Bankruptcy.*

A. The lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in paragraph XV. For a chapter 7 bankruptcy or a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XV B 3 and B 6 are applicable.

B. Loss Payments.—1. *Estimated Loss Payments.* a. If a borrower has filed for protection under a reorganization bankruptcy, the lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA at its option in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the lender for any court

ordered interest rate reduction during the term of the reorganization plan.

b. The lender will use Form FmHA 449–30 to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the lender will complete Form FmHA 1980–44 and forward this form to the Finance Office.

2. *Interest Loss Payments.* a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XV B 1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments. a. Final loss payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payment to be applied in a different manner, the lender will immediately notify the FmHA servicing office.

5. Overpayments. Upon completion of the reorganization plan, the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the lender. If the actual loss payment is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XVI. *Debt write-down.* Refer to title 7 of CFR part 1980, subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement, which has been written down, will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The lender will use Form FmHA 449–30 to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVII. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR part 1980, subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XVIII. *Execution of Agreements.* This agreement is executed prior to the execution of any Loan Note Guarantee under 7 CFR part 1980, subparts A and B and does not impose any obligation upon FmHA with respect to the execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Loan Note Guarantee under exhibit A of 7 CFR part 1980, subpart B will be considered by FmHA on a case-by-case basis.

XIX. *Notices.*

All requests for Loan Note Guarantees and any notices or actions will be initiated through the following FmHA County Offices

_____

_____

_____

_____

_____.

XX. *Termination of Agreement.* Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR part 1980, subpart B, this agreement will terminate as to the lender's submission of request for Loan Note Guarantee(s) under exhibit A, 7 CFR part 1980, subpart B 2 years from the date set forth in paragraph XXI unless otherwise earlier revoked by FmHA. This agreement will remain in force as to any Loan Note Guarantee(s) issued pursuant to Exhibit A, 7 CFR part 1980, subpart B and remaining extant at time of expiration or revocation until those loan note guarantees still extant are concluded.

XXI. This Agreement is dated _____.

LENDER _____

(Name)

UNITED STATES OF AMERICA

Farmers Home Administration

_____

(IRS) I.D. Tax No.)

By _____

By _____

Title _____

Title _____

ATTEST: _____

(SEAL)

11. Exhibit A, Attachment 2 of subpart B of part 1980 is revised to read as follows:

Exhibit A to Subpart B

Attachment 2

Farmers Home Administration Approved Lender Program (ALP) Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases)

_____

(lender) of _____ is designated as an Approved Lender for the purpose of processing and requesting Contract(s) of Guarantee authorized by Exhibit A to 7 CFR part 1980, subpart B. This agreement does not apply to lines of credit types other than those specifically named in this agreement. The agreement applies to the following offices of the lender: _____

_____

_____

The United States of America, acting through the Farmers Home Administration (FmHA), agrees to enter into Contract of Guarantees with the lender for operating loan lines of credit and to participate in a percentage of any loss on any such operating loan line of credit advance(s) not to exceed the amount established in the particular Contract of Guarantee as the percentage of the amount of the principal and any accrued interest. The terms of any Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advance(s), the lender enters into this Agreement.

The Parties Agree

I. The maximum loss covered under the Contract of Guarantee will not exceed the amount established in the particular line of credit guarantee as to percentage of the principal and accrued interest on any operating loan line of credit advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. *Full Faith and Credit.* The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or which lender participates in or condones. A note which provides for the payment of interest of interest shall not be guaranteed. Any Contract of Guarantee, attached to or relating to a note which provides for the payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usuary laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Contract of Guarantee shall not cover interest accruing to the lender 150 days after a decision has been made by FmHA and the lender to liquidate.

III. *Lender's Sale of Guarantee Line of Credit by Participation.*

A. The lender may obtain participation in its line of credit under its normal operating procedures. The lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line(s) of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another lender. The lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedure. Participation means a sale of an interest in the line of credit in which the lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the lender cannot participate any amount of the line(s) of credit to the applicant or borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the lender desires to sell all or part of the guaranteed portion of the line(s) of credit through participation at or subsequent to execution of the line of credit agreement(s), such line(s) of credit must not be in default as set forth in the terms of the line of credit agreement(s) and note(s), if any exist. The lender will retain the responsibility for servicing and liquidation of the line(s) of credit. Participation with a lender by an entity does not make the entity a holder.

IV. The lender agrees funds advanced under the line(s) of credit will be used for the purpose authorized in title 7 CFR part 1980, subpart B as set forth in Form FmHA 1980–15 for the particular loan.

V. The lender certifies that none of its officers, directors, stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System (FCS) institutions with direct lending authority that have normal stockshare requirements for participating), or other owners have, or will have, a substantial financial interest in any guaranteed line of credit borrower. The lender certifies that neither any guaranteed line of credit borrower nor its officers, directors, stockholders, or other owners have a substantial financial interest in the lender. If the borrower is a member of the board of directors of a Farm Credit Bank or other FCS institution with direct lending authority, the lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the lender's agent in servicing the account.

VI. The lender will certify to FmHA, prior to the issuance of a Contract of Guarantee for each line of credit agreement, that there has been no adverse change(s) in the borrower's financial condition nor any other adverse change in the borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Contract of Guarantee to issuance of the Contract of Guarantee. The lender's certification must address all adverse changes and be supported by financial statements of the borrower and its guarantors not more than 90 days old at the time of certification. As used in this paragraph only, the term "borrower" includes any parent, affiliate, or subsidiary of the borrower.

VII. The lender will submit the required guaranteed fee with a Guaranteed Loan Closing Report at the time a Contract of Guarantee is issued.

VIII. *Servicing.*

A. The lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portion of the line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit. The lender shall perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are guaranteed.

B. It is the lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses, or authorizations are obtained from the appropriate regulatory agencies; that the borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made, and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement and note, if one exists, security instruments, any supplemental agreements, and notifying both FmHA and the borrower in writing of any violations.

2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized, rescheduled, or written down only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the line of credit.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the lender as the mortgagor or secured party.

5. Assuring that: a. Taxes, assessments, or ground rents against or affecting collateral are paid;

b. The line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

c. Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

d. Proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on whcih the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture, or fixtures may be used to acquire property of similar nature without written concurrence of FmHA;

e. The borrower complies with all laws and ordinances applicable to the line of credit, the collateral, and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such guarantors will be obtained which are not over 90 days old. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the borrower obtains marketable title to the collateral.

9. Assuring that the borrower (as defined in 7 CFR part 1980, subpart A, § 1980.106(b)(4)) is not released from liability for all or any part of the line of credit, except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured borrower at least annually. The lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of action to the County Supervisor.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M.

D. The lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR part 1980, subpart B, § 1980.126.

IX. *Default by Borrower.*

A. The lender will notify FmHA when a borrower is 30 days past due on a payment or if the borrower has not met its responsibilities of providing the required financial statements to the lender or is otherwise in default. The lender will notify FmHA of the status of a borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged within 30 days of notification to FmHA of the borrower's default by the lender with the borrower and FmHA to resolve the problem. Actions taken by the lender with written concurrence of FmHA will include but are not limited to the curative actions contained in this subpart.

B. The lender will negotiate, in good faith, an attempt to resolve any problem to permit the borrower to cure a default, where reasonable. The lender agrees that, if liquidation of the account becomes imminent, the lender will consider the borrower for an interest rate buydown under Exhibit D of subpart B of 7 CFR, part 1980, and request a determination of the borrower's eligibility by

FmHA. The lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown Program.

X. *Liquidation.* If the lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the lender with FmHA. The meeting will be held within 30 days of the lender's notification to FmHA of the borrower's default. When FmHA concurs with the lender's conclusion or at any time concludes independently that liquidation is necessary, FmHA will notify the lender and the matter will be handled as follows:

The lender will liquidate the line of credit unless FmHA, at its option, decides to carry out liquidation.

A. Lender's proposed method of liquidation. Within 30 days after FmHA's concurrence in the lender's decision to liquidate, the lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the lender's ownership of the guaranteed line of credit agreement and related security instruments.

2. Information lists concerning the borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, and advise as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The lender will obtain an independent appraisal report on all collateral securing the line of credit which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the lender.

B. FmHA's response to lender's liquidation plan. FmHA will inform the lender in writing whether it concurs in the lender's liquidation plan within 30 days after receipt of such plan from the lender. If FmHA needs additional time to respond to the liquidation plan, FmHA will advise the lender of a definite time for such response. Should FmHA and the lender not agree on the lender's liquidation plan, negotiation will take place between FmHA and the lender to resolve the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the line of credit. In this event, the lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Upon approval by FmHA of lender's liquidation plan, the lender will submit an estimated loss within 30 days in accordance with paragraph X of this attachment.

D. Acceleration. The lender or FmHA, if FmHA liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration documents will be sent to FmHA or the lender, as the case may be.

E. Liquidation: Accounting and Reports. When the lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the lender will be provided with similar reports on request.

F. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculation of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR part 1980, subpart B.

2. When the lender is conducting the liquidation, it may request an estimated loss by submitting to FmHA an estimate of loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the lender provided the lender applies such amount due to the outstanding balance owed on the guaranteed debt in accordance with paragraph X H of this attachment. Such estimate will be prepared and submitted by the lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. If it appears the liquidation period will exceed 90 days, the lender will file an estimated loss claim within 30 days after FmHA's concurrence in the lenders' proposed liquidation plan. If the lender fails to submit an estimated loss claim within 30 days of FmHA's approval of the liquidation plan, the lender will be notified in writing and FmHA will submit an estimated loss claim based on the Agency's calculations. When a borrower files bankruptcy, see section XVI, Bankruptcy, of Form FmHA 1980–38, "Lender's Agreement (Line of Credit)," or section XV, Bankruptcy, of this agreement. If bankruptcy is filed, interest accruing 30 days after approval of an estimated loss shall not be covered by the guarantee of FmHA and shall not be included in any final report of loss. When one note or more than one note has been issued, once this estimated loss claim is approved by FmHA, (including cases when FmHA completes the estimated loss claim), the lender will discontinue interest accural on the defaulted loan except for protective advances; *Provided*, however, interest accruing on approved protective advances made after approval of the liquidation plan shall continue to be covered by the guarantee until paid and will be included in the calculation of any final loss claim if not paid sooner for purposes of computing losses under the Contract of Guarantee and the loss claim will be promptly processed in accordance with the applicable FmHA regulations. Interest amounts collected by the lender in excess of the maximum interest to be covered by the guarantee will be applied to the guaranteed loan debt as provided by FmHA.

Within 30 days after the report of loss estimate has been approved by FmHA, FmHA will send the original report of loss estimate to the FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the lender to FmHA. Upon completion of the final report of loss, the lender will provide FmHA with the documentation necessary to determine whether estimated loss paid equals loss sustained. If the actual loss sustained resulted in an overpayment to the lender, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss. If the actual loss sustained resulted in an underpayment to the lender, the final loss settlement will include interest on the amount of the underpayment from the time of approval of the estimated loss.

3. After the lender has completed liquidation, FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final report of loss, it will investigate the matter. The lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final report of loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the lender has conducted liquidation and after the final report of loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final report of loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the lender.

b. If the loss is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and report of loss

to the lender and will pay the lender in accordance with the Contract of Guarantee.

6. In those instances where the lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as proved above, and such payment will be made by FmHA when the final report of loss is approved.

G. *Maximum amount of interest loss payment.* Notwithstanding any other provision of this agreement, the amount payable by FmHA to the lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. When the lender files an estimated loss claim and the claim has been approved by FmHA the lender will discontinue interest accrual on the defaulted loan for purposes of computing losses under the Contract of Guarantee. The balance of accrued interest (including any loan subsidy) payable to the lender, if any, will be calculated on the final report of loss form. In no case shall interest accrue beyond 150 days after the date of the decision by the lender and FmHA to liquidate the guaranteed debt without the prior written authorization of FmHA. FmHA may grant an extension of time when it is established that the loan is unlikely to remain in liquidation status, there is an underpayment on the estimated loss, or reliable appraisals cannot be obtained. FmHA may also consider such factors as uncertainties caused by litigation, extended redemption periods, or other comparable factors beyond the control of the lender.

H. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the lender on the guaranteed portion of the loan debt. However, such application does not release the borrower from liability. Such amounts are only to compensate the lender for the loss. (See XIII below.) In all cases, a final Form FmHA 449–30 prepared and submitted by the lender must be processed by FmHA in order to close out the files.

I. Income from collateral. Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

J. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the lender (with FmHA written concurrence) to be protective advances. If circumstances have changed after submission of the liquidation plan which require a revision of liquidation costs, the lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

K. Payment. Loss settlements payments will be paid by FmHA within 30 days after the review of the accounting of the collateral.

XI. *Protective Advances.* Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not protective advances.

XII. *Additional Loans or Advances.* Except as provided for in each borrower's loan agreement which was specifically approved by FmHA for that specific borrower, the lender will not make additional expenditures or new lines of credit or to any borrower which has financial assistance guaranteed by FmHA without first obtaining the written approval of FmHA even though such expenditures, lines of credit or loans will not be guaranteed.

XIII. *Future Recovery.* After a line of credit has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the lender, will be pro-rated between FmHA and the lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the line of credit and the lender will retain such amount in proportion to the percentage of the unguaranteed portion of the line of credit.

XIV. *Transfer and Assumption Cases.* Refer to 7 CFR part 1980, subpart B.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor debtor (including personal guarantees) is released from personal liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss of Form FmHA 449–30 to recover its pro-rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA 449–30, lines 13 and 14.

XV. *Bankruptcy.*

A. The lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in paragraph XV. For a chapter 7 bankruptcy or a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XV B 3 and B 6 are applicable.

B. *Loss Payments.* 1. *Estimated Loss Payments.* a. If a borrower has filed for protection under a reorganization bankruptcy, the lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA at its option in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The lender will use Form FmHA 449–30 to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the lender will complete Form FmHA 1980–44 and forward this form to the Finance Office.

2. *Interest Loss Payments.* a. Interest loss payments sustained during the period of the organization plan will be processed in accordance with paragraph XV B 1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the lender for the difference in interest rates specified on the Contract of Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. *Final Loss Payments.* a. Final loss payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. *Payment Application.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payment to be applied in a different manner, the lender will immediately notify the FmHA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated

loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the lender. If the actual loss payment is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the not rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XVI. *Debt Write-Down.* Refer to title 7 of CFR part 1980, subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The lender will use Form FmHA 449–30 to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVII. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR part 1980, subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XVIII. *Execution of Agreements.* This agreement is executed prior to the execution of any Contract of Guarantee(s) under 7 CFR part 1980, subparts A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Contract of Guarantee under Exhibit A of 7 CFR part 1980, subpart B will be considered by FmHA on a case-by-case basis.

XIX. *Notices.*

All requests for Contract of Guarantee(s) and any notices or actions will be initiated through the following FmHA County Offices

_____

_____

_____

_____

_____.

XX. *Termination of Agreement.* Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR part 1980, subpart B, this agreement will terminate as to the lender's submission of request for Contract of Guarantee(s) under exhibit A, 7 CFR part 1980, subpart B 2 years from the date set forth in paragraph XXI unless otherwise earlier revoked by FmHA. This agreement will remain in force as to any Contract of Guarantee(s) issued pursuant to Exhibit A, 7 CFR part 1980, subpart B and remaining extant at time of expiration or revocation until those Contracts of Guarantees still extant are concluded.

XXI. This Agreement is dated _____.

LENDER_____

(Name)

UNITED STATES OF AMERICA

Farmers Home Administration

_____

(IRS) I.D. Tax No.)

By _____

By _____

Title _____

Title _____

ATTEST: _____

(SEAL)

Dated: August 7, 1990.

David T. Chen,

Acting Administrator, Farmers Home Administration.

[FR Doc. 91–2504 Filed 2–4–91; 8:45 am]

BILLING CODE 3410–07

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 084CE, Special Condition 23–ACE–55]

Special Conditions; Cessna Model 525 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions; reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for the notice of proposed rulemaking (NPRM) regarding special conditions for the Cessna Model 525 airplane. That NPRM was published in the Federal Register on December 11, 1990 (55 FR 50339); the comment period closed January 10, 1991. This action provides for reopening the comment period through March 1, 1991.

The FAA received a request dated January 14, 1991, from a foreign civil airworthiness authority for additional time in which to provide substantive comments. The FAA has determined it to be in the public interest to provide the additional time and the comment period is reopened accordingly.

DATES: Comments must be received on or before March 1, 1991.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE–7, ATTENTION: Rules Docket Clerk, Docket No. 084CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 084CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, (816) 426–5683.

Issued in Kansas City, Missouri on January 24, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–2620 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–ASW–42]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A–1, 205B, and 212 Helicopters; and BHTI-Manufactured Model UH–1B, UH–F and UH–1H Military Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthinss directive (AD) that would establish a mandatory retirement or service life for the main rotor pillow block bolts, washers, and nuts on BHTI Model 204B, 205A, 205A–1, 205B, 212 helicopters, and BHTI-manufactured Model UH–1B, UH–1F, and UH–1H military helicopters. The AD is needed to prevent possible separation or failure of the main rotor hub assembly which could result in loss of control of the helicopter.

DATES: Comments must be received on or before March 22, 1991.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007, Docket Number 90–ASW–42, or delivered in duplicate to 4400 Blue Mound Road, room 158, Building 3B, of the Rules Docket at the above address. Comments must be marked: Docket No. 90–ASW–42. Comments may be inspected at the above location in room 158, Building 3B, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

The applicable service bulletin may be obtained from: Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or may be examined in the Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, Fort Worth, Texas 76193–0170, telephone (817) 624–5168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90–ASW–42." The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been reports of at least five cases of pillow block bolt fatigue cracks on BHTI Model 205A–1 and 212 helicopters. Failure of all four bolts will allow separation of the main rotor from the helicpoter.

The FAA determined that these special pillow block bolts, part number (P/N) 204–011–171–003, can no longer be operated with an unlimited service life and these bolts, along with the mating nuts, P/N EB080 or 42FLW–820, and washers, P/N 140–007–33S28–3, must be removed from further service after a specified time in service.

These same bolts, nuts, and washers are used on the military UH–1B, UH–1F, and UH–1H helicopters and are subject to the same operating environment. They should be removed at the same time in service as the civilian versions.

Since this condition is likely to exist or develop on helicopters of the same type designs, the proposed AD would establish a mandatory retirement life for the main rotor pillow block bolts, nuts, and washers installed on these helicopters.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 1,250 U.S. registered helicopters at a cost of $130 per aircraft to replace the four bolts, four nuts, and four washers every 1,200 hours' time in service, for a total fleet cost of $162,500 each 1,200 hours. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI); California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Pilot Personnel International, Inc.; Southern Aero Corporation; and Southwest Florida Aviation: Docket No. 90–ASW–42.

Applicability: All Model 204B, 205A, 205A–1, 205B, and 212 helicopters, certificated in any category, and military Model UH–1B, UH–1F, and UH–1H helicopters, certificated in the resticted category.

Compliance: Required as indicated, unless already accomplished.

To prevent separation of the main rotor pillow blocks from the hub assembly as a result of bolts cracking which could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 300 hours' time in service after the effective date of this AD, or before attaining 1,200 hours' total time in service on the affected bolts, or at the next hub assembly overhaul, whichever occurs first, remove the four bolts, P/N 204–011–171–003, joining the two pillow blocks to the main rotor yoke assembly. Replace the pillow blocks using new bolts, P/N 204–011–171–003, nuts, P/N EB080 or 42FLW–820, and washers, P/N 140–007–33S28–3 as follows:

(1) Coat shank of the bolts with corrosion prevention compounds, such as MIL–C–16173 Grade 1, and torque bolts and nuts 64 to 79 foot-pounds. Retorque nuts within 15 to 30 hours' time in service intervals, three time after installation.

(2) Apply sealant, such as Bell P/N 299–947–107 TYIII CL7, to the four bolt heads and bushings surface, nuts and yoke mating surfaces.

(b) Thereafter, remove bolts and associated hardware from the pillow blocks and replace them with new bolts, nuts, and washers as described in this AD at intervals not to exceed 1,200 hours' time in service, or whenever the bolts are removed for any reason.

(c) This AD establishes a 1,200 hour retirement or service life on the parts noted. Rework or repair of the bolts, P/N 204–011–171–003, nuts, P/N EB080 or 42FLW–820, and washers, P/N 140–007–33S28–3, is not authorized.

(d) In accordance with §§ 21.197 and 21.199, flight is permitted to a base where the action required by this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety with this AD may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, Federal Aviation Administration, Fort Worth, Texas 76193–0170.

NOTE: Bell Helicopter Textron, Inc. Alert Service Bulletins, ASB 204–90–27, ASB 205–90–38, and ASB 212–90–62, all dated June 26, 1990, no revisions, and ASB 205B–90–4, dated October 30, 1990, no revisions, and ASB205B–90–4, dated October 30, 1990, no revisions pertain to this AD.

A copy of the service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

Issued in Fort Worth, Texas, on January 22, 1991.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91–2626 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 90-ASO-19]

Proposed Alteration of VOR Federal Airway; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of proposed rulemaking.

SUMMARY: This supplemental notice amends a previous proposal to alter the description of very high frequency omnidirectional radio range (VOR) Federal Airway V-329 located in the vicinity of Eglin Air Force Base (AFB), FL. VOR Federal Airway V-329 was utilized as a departure/arrival route for the Eglin AFB complex. The new route proposed to realign V-329 via the Andalusia, AL, very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) to Montgomery, AL. The Flight Inspection Field Office has advised that the proposed VOR radials between the Andalusia and Montgomery, AL, VOR's would not pass flight inspection. This action would now realign VOR Federal Airway V-329 from VOR Intersection Andal, FL, to Montgomery, AL.

DATES: Comments must be received on or before March 19, 1991.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, ASO-500, Docket No. 90-ASO-19, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-329 located in the vicinity of Eglin AFB, FL. The FAA published an earlier notice proposing to realign V-329 from the Corky Intersection via Andalusia, AL, to Montgomery, AL, on December 5, 1990 (55 FR 50188). The Andalusia VOR would not pass flight check; therefore, the FAA is again realigning V-329 direct to Montgomery from Andal, FL. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-329 [Revised]

From INT Monroeville, AL, 104°T(100°M) and Montgomery, AL, 188°T (185°M) radials; Montgomery; to Vulcan, AL.

Issued in Washington, DC, on January 25, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-2627 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ACE-17]

Proposed Designation of Transition Area—Kingman, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at Kingman, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Kingman Municipal Airport, Kingman, Kansas (utilizing the Hutchinson, Kansas VORTAC as a navigational aid). This proposed action would change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

DATES: Comments must be received on or before March 4, 1991.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart G, § 71.181 of the Federal Aviation Regulations [14 CFR part 71] by designating a 700-foot transition area at Kingman, Kansas. To enhance airport usage, a new instrument approach procedure is being developed for the Kingman Municipal Airport, Kingman, Kansas, utilizing the Hutchinson VORTAC as a navigational aid. This navigational aid would provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Kingman, Kansas, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) from other aircraft operating under Visual Flight Rules (VFR). This action would change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kingman, Kansas [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Kingman Municipal Airport (lat. 37°40'00"N., long. 98°07'21"W.); and within 2.5 miles each side of the Hutchinson, Kansas VORTAC 187° radial, extending from the 5-mile radius area to 13 miles north of the Kingman Airport, excluding that airspace that overlies the Hutchinson, Kansas, transition area.

Issued in Kansas City, Missouri on January 18, 1991.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 91-2628 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ACE-18]

Proposed Designation of Transition Area—Monett, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at Monett, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Monett Municipal Airport, Monett,

Missouri (utilizing the Neosho, Missouri VORTAC as a navigational aid). This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before March 4, 1991.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR part 71) by designating a 700-foot transition area at Monett, Missouri. To enhance airport usage, a new instrument approach procedure is being developed for the Monett Municipal Airport, Monett, Missouri, utilizing the Neosho, Missouri VORTAC as a navigational aid. This navigational aid would provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Monett, Missouri, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operations and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) from other aircraft operating under Visual Flight Rules (VFR). This action would change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Monett, Missouri [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Monett Municipal Airport (lat. 36°54'30" N., long. 94°01'00" W.); and within 2 miles each side of Neosho VORTAC 064° radial, extending from the 5-mile radius area to 8 miles west of the Monett Airport.

Issued in Kansas City, Missouri on January 18, 1991.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 91-2629 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 330

RIN 3220-AA82

Determination of Daily Benefit Rates

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to revise part 330 of its regulations under the Railroad Unemployment Insurance Act. Proposed part 330 sets forth Board procedures for computing: (1) An employee's daily benefit rate for a given benefit year, and (2) the maximum daily benefit rate authorized under the 1988 amendments to the Act.

DATES: Comments must be submitted by April 8, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, Bureauy of Law, Chicago, Illinois 60611; (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: Part 330 of 20 CFR chapter II was last amended on October 29, 1975 (40 FR 50257), to provide information about new Board procedures adopted following the

enactment of the 1975 amendments to the Railroad Unemployment Insurance Act. In the period since then, Board procedures and forms have been modified to simplify the collection of data relating to this part and to eliminate collection of unnecessary data.

Under the 1975 amendments, the maximum daily benefit rate was increased to $25.00, and no further increase was possible except through legislative enactment. On November 10, 1988, section 7201 of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100–647, 102 Stat. 3774) was enacted to amend section 2 of the Railroad Unemployment Insurance Act to increase the maximum daily benefit rate from $25.00 to $30.00 and to prescribe a procedure for determining when the maximum daily benefit rate may increase further. Under Public Law 100–647, the Railroad Retirement Board is required to compute annually the maximum daily benefit rate in accordance with the new statutory procedure and then to publish notice of such maximum daily benefit rate.

Under the 1988 amendments, future increases in the maximum daily benefit rate are indexed on a yearly basis to increases in wages, as reflected by increases in the maximum compensation base provided for tier I taxes under the Railroad Retirement Tax Act (Chapter 22 of the Internal Revenue Code of 1986). The tier I compensation base is adjusted annually so that it is the same amount as the social security wage base under the Federal Insurance Contributions Act; the social security wage base is adjusted annually to reflect growth in average national wages.

Consequently, whether the maximum daily benefit rate will increase depends on the extent of the increase in the tier I compensation base under the Railroad Retirement Tax Act. For example, the tier I compensation base increased from $45,000.00 to $48,000.00 for 1989. Under the new indexing procedure, the amount of that increase was sufficient to produce an increase in the maximum daily benefit rate from $30.00 to $31.00. That increase applied to days of unemployment and sickness in registration periods beginning after June 30, 1989 because of the increase in the tier I earnings base for 1989. However, when the tier I base increased to $51,300.00 for 1990, that increase was not sufficient to trigger an increase in the daily benefit rate for days of unemployment or sickness beginning after June 30, 1990.

Pursuant to the new statutory procedure, on December 7, 1988 the Board published a notice in the **Federal Register** that the maximum daily benefit rate would increase to $31.00 in July, 1989 (53 FR 49369–49370). On February 28, 1990, the Board published a notice in the **Federal Register** that the maximum daily benefit rate would remain at $31.00 with respect to days of unemployment or days of sickness in registration periods beginning after June 30, 1990 (55 FR 7075).

Part 330 is therefore being revised to describe the procedure for computing the maximum daily benefit rate and for notifying interested parties of the results of such computation.

This part is also being revised to reflect current Board procedures for determining an employee's daily benefit rate and to make the language of the regulation more readable. Specifically, § 330.3(c) is proposed to be revised to reflect that the number of miles constituting a basic day for certain railroad occupations has increased from the 100 and 150 mile standards presently found in § 330.2(b). Section 330.5 is proposed to be revised to provide that an employee's daily benefit rate shall be considered the minimum daily benefit rate of $12.70 until the employee or his or her employer provides evidence as to the employee's last daily rate of compensation in the applicable base year.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections under this part have been approved by the Office of Management and Budget under control numbers 3220–0007, 3220–0008 and 3220–0097.

List of Subjects in 20 CFR Part 330

Railroad employees, Railroad employers, Railroad unemployment benefits.

For the reasons set out in the preamble, part 330 of title 20 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 330—DETERMINATION OF DAILY BENEFIT RATES

Sec.

330.1 Introduction.
330.2 Computation of daily benefit rate.
330.3 Daily rate of compensation.
330.4 Last railroad employment in the base year.
330.5 Procedure for obtaining and using information about daily rate of compensation.

Authority: 45 U.S.C. 362(1).

§ 330.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of benefits, at a specified daily benefit rate, to any qualified employee for his or her days of unemployment or days of sickness, subject to a maximum amount per day. The "daily benefit rate" for an employee is the amount of benefits that he or she may receive for each compensable day of unemployment or sickness in any registration period, not counting days of unemployment or sickness in the employee's non-compensable waiting period. This part explains how the daily benefit rate is determined.

§ 330.2 Computation of daily benefit rate.

(a) *Basic formula.* A qualified employee's daily benefit rate for a given benefit year, as defined in part 302 of this chapter, is an amount equal to 60 percent of the employee's daily rate of compensation for his or her last railroad employment in the applicable base year, but such rate will not exceed the maximum amount set forth in paragraph (b) of this section nor will it be less than $12.70 per day.

(b) *Maximum daily benefit rate.* The maximum daily benefit rate is the greater of $30.00, or the amount computed on the basis of this formula:

$$\left(BR = 25 \quad 1 + \frac{A-600}{900}\right)$$

In this formula, "BR" represents the maximum daily benefit rate, and "A" represents the amount obtained by dividing, by 60, the amount of tier I Railroad Retirement Tax Act earnings base as provided for in section 3231(e)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 3231(e)(2)) for the calendar year in which the benefit year begins, with this quotient being rounded down to the nearest multiple of $100.00. If the maximum daily benefit rate so computed is not a multiple of $1.00, the Board will round it to the nearest multiple of $1.00. Such rounding will be upward if the amount so computed is equidistant between two multiples of $1.00.

(c) *When increase effective.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, such increase will apply to days of unemployment or days of sickness in registration periods beginning after June 30 of the calendar year involved in the computation of "A" in that formula.

(d) *Notice.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, or if the annual application of the formula does not trigger an increase, the Board will publish a notice in the Federal Register explaining how it computed the maximum daily benefit rate for the year. The Board will also notify each employer of the maximum amount of the daily benefit rate. The Board will make the computation as soon as it knows the amount of the tier I Railroad Retirement Tax Act earnings base under 3231(e)(2) of the Internal Revenue Code of 1986 for each calendar year and will publish notice as soon as possible thereafter but in no event later than June 1 of each year. Information as to the current amount of the maximum daily benefit rate will also be available in any Board district or regional office or from the Bureau of Unemployment and Sickness Insurance.

(e) *Sources of information.* In determining an employee's daily rate of compensation for the purpose of computing his or her daily benefit rate, the Board will rely on information furnished by the employee and his or her last employer in the base year. An employee's earnings from employment not covered by the Railroad Unemployment Insurance Act are not considered in computing his or her daily benefit rate.

§ 330.3 Daily rate of compensation.

(a) *Definition.* An employee's daily rate of compensation is his or her straight-time rate of pay, including any cost-of-living allowance provided in any applicable working agreement. It does not include any overtime pay, penalty payment, or other special allowance except as hereinafter provided. An employer's or employee's report of the daily rate of compensation shall, in the absence of information to the contrary, and subject to the considerations set forth in this section and §§ 330.4 and 330.5, be considered to show the daily rate of compensation of the employee by or for whom the report has been furnished. Where a rate other than a daily rate is reported, the Board will convert it to a daily rate.

(b) *Hourly, weekly or monthly rate.* An hourly rate shall be converted to a daily rate by multiplying such hourly rate by the number of hours constituting a working day for the employee's occuption or class of service. A weekly or monthly rate shall be converted to a daily rate by dividing such rate by the number of working days constituting the work week or work month, as the case may be, for the employee's occupation or class of service.

(c) *Mileage rate.* When a collective bargaining agreement provides for payment of compensation on a mileage basis, the employee's daily rate of compensation is his or her rate of pay for the number of miles constituting a basic day, including any allowance, as prescribed by the agreement, that is added to his or her basic rate of pay for the number of miles constituting a basic day.

(d) *Piece rate or tonnage rate.* Where a piece rate or tonnage rate is reported, the daily rate of compensation shall be determined by computing the employee's average earnings per day for the days on which he or she worked substantially full time (excluding any overtime pay or penalty rates) at such piece rate or tonnage rate during the last two pay periods in which he or she engaged in such work in the base year.

(e) *Commissions or percentage of sales.* Where the compensation reported consists of or includes commissions or percentages of sales, the daily rate of such commissions or percentage of sales shall be determined by computing the employee's average net commissions or percentage earnings (excluding any amounts he or she received to compensate him or her for expenses) per day for the days in the last two pay periods in which he or she worked on a commission or percentage basis in the base year.

(f) *International service.* In the case of an employee who, on his last day of employment in the base year, worked partly outside the United States and partly in the United States for an employer not conducting the principal part of its business in the United States, the employee's daily rate of compensation shall be determined in the same manner as it would if all his service on that day had been rendered in the United States.

§ 300.4 Last railroad employment in the base year.

The phrase "last railroad employment in the applicable base year", as used in § 330.2(a) of this part, means generally the employee's last "service performed as an employee", within the meaning of section 1(g) of the Railroad Unemployment Insurance Act. If an employee did not actually perform any service as an employee in the applicable base year (the calendar year preceding a benefit year) but did receive qualifying compensation such as vacation pay or pay for time lost for days in such base year, the Board will consider that his or her last railroad employment in the base year was the employment on which the qualifying compensation was based. The daily rate of such compensation shall be deemed to be the employee's daily rate of compensation for purposes of this part. If an employee's last railroad employment in the base year casual or temporary work and was performed while on furlough from other base year railroad employment, the Board will disregard the daily rate of compensation paid for the casual or temporary work if such rate of compensation produces a daily benefit rate lower than the daily benefit rate based on the daily rate of compensation for the employment from which the employee was furloughed.

§ 330.5 Procedure for obtaining and using information about daily rate of compensation.

(a) *Information furnished by employers.* Every employer, as defined in part 301 of this chapter, shall furnish information to the Board with respect to the daily rate of compensation of each employee for his or her last employement in the applicable base year. The employer shall make such report when it files its annual report of compensation in accordance with part 209 of this chapter and shall use the form prescribed by the Board for that purpose. If an employee's last daily rate of compensation in the base year is $99.99 or more, the employer may report such rate as $99.99 instead of the employee's actual last daily rate of compensation. In the absence of evidence to the contrary or a challenge by the employee, the daily rate of compensation provided by an employer under this section shall be used to compute a qualified employee's daily benefit rate. If an employer fails to report that last daily rate of compensation for a qualified employee who has applied for benefits or if an employee challenges the daily rate reported by an employer, the procedure in paragraphs (b) and (c) of this section will apply.

(b) *Information furnished by employee.* The Board will afford an employee an opportunity to establish his or her last daily rate of compensation if the base year employer did not report a rate for the employee on its annual report of compensation or if the employee challenges the accuracy of the rate reported by the employer. Unless deemed unreasonable, a daily rate of compensation reported by an employee under this paragraph will be used provisionally to compute his or her daily benefit rate, but such rate will be verified in accordance with paragraph (c) of this section. In any case on which the employee's report is deemed

unreasonable and no employer report has been provided, the employee's report shall be disregarded, and the Board will seek to verify the employee's last daily pay rate in accordance with paragraph (c) of this secton. Pending receipt of such verification, the employee's daily benefit rate shall be set at $12.70.

(c) *Employer verification.* Whenever an employee has established a daily rate of compensation under paragraph (b) of this section, the Board will request the employee's base year employer to verify such rate within 30 days. If such verification is not received within 30 days, the employee's daily rate of compensation may be based upon other evidence gathered by the Board if such evidence is reasonable in light of compensation rates reported for other employees of the base year employer in the same occupation or class of service as the employee or in light of previous compensation rates reported by the base year employer for its employees. A daily benefit rate established under this paragraph may not exceed the maximum daily benefit rate established under this part.

(d) *Protest.* An employee who is dissatisfied with the daily benefit rate computed under this part may contest such computation in accordance with part 320 of this chapter.

(Approved by the Office of Management and Budget under control numbers 3220–0007, 3220–0008 and 3220–0009.)

Dated: January 8, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 91–2653 Filed 2–4–91; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–89–90]

RIN 1545–AP16

Low-Income Housing Credit and FIRREA

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations concerning the low-income housing credit of section 42 of the Code. The proposed regulations address the question whether a building financed with the proceeds of a below market loan under an Affordable Housing Program established pursuant to section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) is a federally subsidized building for purpose of section 42. This information will enable taxpayers who obtain financing under an Affordable Housing Program for a building eligible for the section 42 credit to determine the correct applicable percentage under section 42(b).

DATES: Written comments must be received by April 8, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (Attn: CC:CORP:T:R (PS–89–90)), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wilson 202–377–6349 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations providing certain rules applicable to the low-income housing credit of section 42, which was enacted by section 252 of the Tax Reform Act of 1986 (Pub. L. 99–514) and amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), and the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). Section 721 of FIRREA (Pub. L. 101–73) requires each of the 12 Federal Home Loan Banks (Banks) to establish an Affordable Housing Program. Under the Affordable Housing Programs, the Banks subsidize loans made to providers of low- and moderate-income rental housing. Since the enactment of FIRREA, taxpayers have raised the question whether a building funded in whole or in part with a below market Affordable Housing Program loan is a federally subsidized building for purposes of the low-income housing credit provisions. The proposed regulations address this issue.

Explanation of Provisions

Under section 42(a), the amount of the low-income housing credit for any taxable year in a qualified low-income building's credit period is an amount equal to the applicable percentage of the qualified basis of the building. For a new building placed in service after 1987 that is not federally subsidized for the taxable year, section 42(b)(2)(B)(i) defines the applicable percentage as the appropriate monthly percentage that will yield, over a 10-year period, amounts of credit that have an aggregate present value equal to 70 percent of the qualified basis of the building. For a new building placed in service after 1987 that is federally subsidized for the taxable year, section 42(b)(2)(B)(ii) defines the applicable percentage as the appropriate monthly percentage that will yield, over a 10-year period, amounts of credit that have an aggregate present value equal to 30 percent of the qualified basis of the building.

Under section 42(i)(2)(A), a new building is federally subsidized for any taxable year if, at any time during that taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103, or any below market Federal loan, the proceeds of which are or were used, directly or indirectly, with respect to the building or the operation thereof. Section 42(i)(2)(D) defines the term "below market Federal loan" as any loan funded in whole or in part with Federal funds if the interest payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). No definition of "Federal funds" is provided by section 42 or its legislative history.

Section 721 of FIRREA added section 10(j) to the Federal Home Loan Bank Act of 1932 (12 U.S.C. 1430(j)), which provides that, pursuant to regulations promulgated by the Federal Housing Finance Board (FHFB), each of the Banks must "establish an Affordable Housing Program to subsidize the interest rate on advances to members engaged in lending for long-term . . . affordable rental housing . . . at subsidized interest rates . . . ." Advances to members are loans made by a Bank to its member institutions. In addition to making subsidized advances to members engaged in affordable housing lending, the Banks may, in accordance with FHFB interim regulations under section 721, provide direct subsidies and other assistance to members engaged in such lending. 12 CFR 960.3.

Subsidized assistance received by member institutions from the Banks under the section 721 Affordable Housing Programs can be used to finance the purchase, construction, or rehabilitation of rental housing in which at least 20% of the units will be occupied by and affordable for very low income households for the remaining useful life of the property or the mortgage term. Section 721 defines the term "affordable for very low income households" to mean housing in which the unit rent does not exceed 30% of a family's

adjusted income, which income is equal to or less than 50% of the median income of the area (as determined by the Secretary of Housing and Urban Development), adjusted for family size. Because these criteria also satisfy the standards provided by section 42, it is possible to use subsidized Affordable Housing Program financing with respect to a building that qualifies for the section 42 credit. See H.R. Rep. No. 209, 101st Cong., 1st Sess. 437 (1989).

When the section 42 credit is used in conjuction with financing subsidized by affordale Housing Program funds, the amount of credit available depends, in part, upon whether Affordable Housing Program funds are Federal funds for purposes of section 42(i)(2)(D). If Affordable Housing Program funds are Federal funds and the Affordable Housing Program loan is a below market loan, the applicable percentage will yield credit amounts having an aggregate present value equal to 30 percent of a building's qualified basis. If Affordable Housing Program funds are not Federal funds, the applicable percentage will yield credit amounts having an aggregate present value equal to 70 percent of a building's qualified basis (provided the lower applicable percentage is not required for some other reason, *e.g.*, receipt of tax-exempt bond financing). Whether Affordable Housing Program funds are Federal funds is determined by examining the characteristics of the Banks and the Affordable Housing Programs.

Sections 721 of FIRREA requires generally that each Bank contribute a certain percentage of its annual net profits to fund its Affordable Housing Program. The Banks are federally chartered and are exempt from Federal, state, and local income taxes. For the most part, the Banks' profits come from the differential between the interest rates they pay to obtain funds and the interest rates they charge to lend funds. The Banks' primary source of funds is the sale of debt obligations (called consolidated obligations) to the public. The Banks also obtain funds in the form of deposits made by member institutions and from the sale of stock to member institutions.

The Banks do not receive appropriated funds from Congress, and Affordable Housing Program funds are not part of the Federal budget. The Banks' consolidated obligations are not obligations of the United States. Furthermore, all Bank stock is owned by member institutions, and the Banks pay dividends out of their profits. But for the statutory requirements of section 721, Afforadable Housing Program funds might otherwise be paid out to member institutions as dividends. These factors indicate that funds loaned under the Afforadable Housing Programs should not be considered Federal funds for purposes of section 42.

Accordingly, section 1.42–3 provides that a below market loan funded in whole or in part with funds from an Affordable Housing Program established under section 721 of FIRREA is not, solely by reason of the Affordable Housing Program funds, a below market Federal loan (as defined in section 42(i)(2)(D)), and that any building financed with the proceeds of such a loan is not, solely by reason of the Affordable Housing Program funds, a federally subsidized building for purposes of determining the applicable percentage under section 42(b). This rule is proposed to be effective for Affordable Housing Program loans made after August 8, 1989 (the effective date of FIRREA).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemkaing for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Christopher J. Wilson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.01–1 through 1.58–8

Credits, Income taxes, Tax liability, Tax rates.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * Section 1.42–3 is also issued under 26 U.S.C. 42(n).

Par. 2. New § 1.42–3 is added to read as follows:

§ 1.42–3 Treatment of buildings financed with proceeds from a loan under an Affordable Housing Program established pursuant to section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

(a) *Treatment under sections 42(i) and 42(b).* A below market loan funded in whole or in part with funds from an Affordable Housing Program established under section 721 of FIRREA is not, solely by reason of the Affordable Housing Program funds, a below market Federal loan as defined in section 42(i)(2)(D). Thus, any building with respect to which the proceeds of the loan are used during the tax year is not, solely by reason of the Affordable Housing Program funds, treated as a federally subsidized building for that tax year and subsequent tax years for purposes of determining the applicable percentage for the building under section 42(b).

(b) *Effective date.* The rules set forth in paragraph (a) are effective for loans made after August 8, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–2621 Filed 1–31–91; 10:58 am]

BILLING CODE 4830–01–M

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26 CFR Part 42

[PS–098–90]

RIN 1545–AP22

Fuel Floor Stocks Tax of 1990; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking which was published in the **Federal Register** for Monday, December 3, 1990 (55 FR 49908). This notice of proposed rulemaking relates to the floor stocks taxes on gasoline, diesel fuel, and aviation fuel that are held on December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These rules reflect changes to the law made by the Revenue Reconciliation Act of 1990. The proposed regulations provide guidance relating to the person liable for the tax, exemptions from the tax, and reporting and recordkeeping responsibilities for the tax.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulation which was the subject of FR Doc. 90–28303, is corrected as follows:

On page 49909, column 3, in the preamble under the heading"Exemptions From the Floor Stocks Tax", line 11, the number "6422" is corrected to read "6427".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–2634 Filed 2–4–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 43

[PS–003–90; PS–069–90]

RIN 1545–AO41; 1545–AP03

Proposed Regulations Regarding the Tax on Transportation by Water; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that implement the tax on the transportation of passengers on covered voyages by certain vessels under sections 4471 and 4472 of the Internal Revenue Code as enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106, 2362); and, proposed regulations relating to definitions under section 4472 of the Internal Revenue Code for purposes of the tax on the transportation of passengers by certain vessels under sections 4471 and 4472 as enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106, 2362).

DATES: The public hearing will be held on Monday, April 8, 1991, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Monday, March 25, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–003–90; or PS–069–90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations on the Excise Tax on Transportation by Water (26 CFR part 43) under sections 4471 and 4472 of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** for Friday, October 12, 1990, (55 FR 41546) and (55 FR 41545), respectively.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, March 25, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–2635 Filed 2–4–91; 8:45 a.m.]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Procedures, Criteria and Schedule for Release of Performance Bond

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of a proposed modification to Kentucky Administrative Regulations (KAR) at 405 KAR 10:040, the regulations governing Kentucky's bond release procedures. The proposed modification will, except for prime farmlands, exclude completion of productivity standards from the revegetation success standards that must be met to qualify for Phase II bond release.

This document sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on March 7, 1991. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on March 4, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on February 20, 1991.

ADDRESSES: Written comments and requests for a hearing should be mailed

or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By a letter dated January 9, 1991, Kentucky submitted a program amendment to OSM containing a proposed change to 405 KAR 10:040 section 2(4)(b)1. (Administrative Record No. KY–1020). The proposed amendment changes the bond release procedures involving vegetation standards of success and productivity standards. The change involves one of the criteria for Phase II bond release. This proposal will deem a Phase II bond release complete if the standards of revegetation approved in the reclamation plan have been met, except productivity standards. This does not apply to prime farmland areas. This change is proposed to be consistent with 30 Code of Federal Regulations (CFR) 800.40 (c)(2).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Person wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on February 20, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under **"ADDRESSES"** by contacing the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **"ADDRESSES."** written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–2648 Filed 2–4–91; 8:45 am]

BILLING CODE 4310–05–M

Fish and Wildlife Service

50 CFR Part 91

RIN 1018–AB54

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service is proposing to revise the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest. The amendments include the following changes: (1) Revising the Display Agreement; (2) listing the eligible species; (3) changing the scoring system; (4) establishing criteria for the selection of judges; and (5) listing the display locations.

DATES: Comments concerning these amendments should be received no later than March 7, 1991. This year's contest will be held on November 5 and 6, 1991, beginning at 11 a.m., on Tuesday and 9 a.m., on Wednesday. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked no later than midnight September 15.

ADDRESSES: Comments should be addressed to: Federal Duck Stamp Office, Department of the Interior, U.S. Fish and Wildlife Service, Suite 2058, Washington, DC 20240. The contest will be conducted in the following location: Department of the Interior Building Auditorium, 1849 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Norma E. Opgrand, Chief, Federal Duck Stamp Program, U.S. Fish and Wildlife Service, Suite 2058, Washington, DC 20240, Telephone: (202) 208–5508 or 208–4354.

SUPPLEMENTARY INFORMATION:

(1) Revising the Display Agreement

The name of The Display Agreement will be changed to The Display and Participation Agreement.

The winning artist must agree to promote the Federal Duck Stamp Program at the following events at the artist's expense: (1) The Waterfowl Festival, Easton, Maryland—immediately following the contest. The festival will pay for lodging; (2) The Wildlife West Festival—the weekend before Thanksgiving. The festival will pay for transportation and lodging expenses; (3) Signing of the Duck Stamp Ceremony at the Bureau of Engraving and Printing, Washington, DC—April; (4) First Day Ceremony, Smithsonian Institution—June 30; (5) First Day of Sale Ceremony—in the home town area of the artist—July 1; (6) Two days at the American Philatelic Society—mid-August; (7) Two days at the BALPEX Show, Baltimore, Maryland—over Labor Day weekend; (8) Two days at the J.N. Ding Darling National Wildlife Refuge—mid-October. The J.N. Ding Darling Society will pay for transportation and lodging; (9) Two days at the National Postage Show, New York, New York—first week in November; (10) Three days at the Federal Duck Stamp Contest, Washington, DC—first part of November; (11) Two days at INTERPEX, New York, New York—middle of March; (12) Two days at WESTPEX, San Francisco, California—first of May; and (13) Two days at COMPEX, Chicago, Illinois—over Memorial Day weekend.

The artist must agree to make brief remarks at all events where the artist is promoting the Federal Duck Stamp Program, as well as provide autographs without charge to the public or the Federal Government.

The artist must agree to sketch two designs to be used for the First Day of Sale postal cancellations.

The artist must agree to design the Australian Duck Stamp if requested to do so.

(2) Listing the Eligible Species

The species for the ten forthcoming Duck Stamp Contests will be listed in the supplementary portion of the Duck Stamp Contest regulations:

1991: (1) Black Scoter (2) Spectacled Eider (3) Barrow's Golden Eye (4) Red-Breasted Merganser (5) Surf Scoter.

1992: (1) Canada Goose (2) Mallard (3) Canvasback (4) Greater Scaup (5) Northern Pintail.

1993: The four remaining species from 1991 plus the Mottled Duck.

1994: The four remaining species from 1992 plus the Green-winged Teal.

1995: The four remaining species from 1993.

1996: The four remaining species from 1994 plus the Black Duck.

1997: The three remaining species from 1995.

1998: The four remaining species from 1996 plus the Ruddy Duck.

1999: The two remaining species from 1997.

2000: The four remaining species from 1998 plus the American Widgeon.

(3) Changing the Scoring System

The scores used will be one to five for all rounds except that the first round will remain as in the past, judged in or out. In addition, the score of each judge will be tallied to give the score for each entry. The previous method of dropping the high and low score will be eliminated.

(4) Establishing Criteria for the Selection of Judges

The critiria will include some art credentials for a minimum of two judges, with the remaining judges representing the conservation community, the philatelic arena, and the sporting world.

(5) Listing the Display Locations

Approximately 1090 entries that receive the highest scores by the judges will be displayed at the Wildlife West Festival, San Bernardino, CA—the last two weeks in November. Approximately 20 of the highest ranked entries from the Federal Duck Stamp Contest will appear on display at the following locations as well as the Wildlife West Festival: (1) Waterfowl Festival, Easton, MD—immediately after the Duck Stamp Contest; (2) American Museum of Wildlife Art, Red Wing, MN—month of December; (3) National Firearms Museum, Washington, DC—January and the first half of February; (4) Southeastern Wildlife Exposition, Charleston, SC—middle of February; and (5) World Wildlife Exposition, Gatlinburg, TN—middle of May.

The dates and location of this year's contest are also announced above in the dates and addresses sections, and the public is invited to attend.

Analysis of these revisions to 50 CFR part 91 has resulted in the Department's determining that they are not major actions under the provisions of Executive Order 12291. The revisions will not significantly affect a substantial number of small entities under the provisions of the Regulatory Flexibility Act, since entrants are individuals and not small entities as defined in 5 U.S.C. 601, *et seq.* The revisions do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* No compliance with the National Environmental Policy Act is required because this rule constitutes minor changes or revisions to an approved action (the Duck Stamp Contest), that have no potential for causing substantial environmental impact.

The primary author of this document is: Norma E. Opgrand, Department of the Interior, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

In light of the foregoing, title 50, part 91 of the Code of Federal Regulations is proposed to be amended as follows:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

1. The authority citation for part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 9701.

Subpart A—Introduction

2. Section 91.1 is revised to read as follows:

§ 91.1 Purpose of regulations.

(a) The purpose of these regulations is to establish procedures for selecting a design that will be used for the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp).

(b) All individuals entering the contest must comply with these regulations. A copy of the regulations along with the Reproduction Rights and Display and Participation Agreements may be requested from the Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

(c) All contestants from the most recent contest will be sent a copy of the regulations, the Display and Participation Agreement and the Reproduction Rights Agreement.

3. Section 91.2 is amended by removing the definition for "Display agreement" and by adding a definition for "Display and Participation agreement" in alphabetical order to read as follows:

§ 91.2 Definitions.

* * * * *

Display and Participation agreement—a document that each contestant must complete, sign and submit with the entry. The signed agreement permits the Service to display the entry at various locations for promotional purposes, and requires the

artist to participate in events in behalf of the Federal Duck Stamp Program.

* * * * *

4. In § 91.4, the introductory text is revised to read as follows:

§ 91.4 Eligible species.

Five or fewer of the species listed below will be identified as eligible each year; those eligible species will be provided to each contestant with the information provided in § 91.1.

* * * * *

Subpart B— Procedure for Entering the Contest

5. In § 91.12, the last sentence is revised to read as follows:

§ 91.12 Contest eligibility.

* * * All entrants must submit signed Reproduction Rights and Display and Participation Agreements.

6. In § 91.14, the first sentence is revised to read as follows:

§ 91.14 Restrictions on subject matter of entry.

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design. * * *

7. Section 91.15 is revised to read as follows:

§ 91.15 Suitability of entry for engraving.

All entries should be drawn with fullest attention to clarity of detail and the relationship of tonal values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engrave line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. The bird or birds shown in the entry will be the only portion of the design that will be engraved. The remaining portion of the design will be done in offset printing. The other engraved portion of the stamp will be the letters and the numerals. The engraver is primarily responsible for line interpretation and discipline, creating the miniature image of bird(s) appearing on the stamp.

8. Section 91.16 is revised to read as follows:

§ 91.16 Submission procedures for entry.

(a) Each contestant may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed and signed Reproduction Rights Agreement and a completed and signed Display and Participation Agreement. The bottom portion of the Reproduction Rights Agreement must be attached to the back of the entry.

(b) Each entry should be appropriately wrapped to protect the art work and sent by registered mail, certified mail, express mail, overnight delivery service or hand delivered to: Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Suite 2058 Department of the Interior, Washington, DC 20240.

Subpart C—Procedures for Administering the Contest

9. Section 91.21 is revised to read as follows:

§ 91.21 Selection and qualification of contest judges.

(a) *Selection:* Five voting judges and one alternate judge will be selected annually by the Secretary of the Interior. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

(b) *Qualifications:* At least two of the five judges will have recognized art credentials such as: (1) An academic degree in art, art history or equivalent from an accredited college or university; (2) Practicing as an artist on a professional basis or as an artist as a hobby; (3) Connnected with the editing or publishing or a major art publication; and (4) Teaching art. Other judges may represent the conservation community, the philatelic arena, and/or the sporting community.

10. Section 91.24 is amended by revising paragraphs (b), (c), and (f) through (i); and adding new paragraph (j) to read as follows:

91.24 Contest procedures.

* * * * *

(b) Prior to the first round of judging, and prior to the opening on the contest to the public, the judges will spend an additional two hours reviewing the entries.

(c) In the first round of judging, all qualified entries will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote "in" or "out" on each entry; those entries receiving a majority of votes "in" will be eligible for the second round of judging. The remaining entries will be placed on display as a group for public viewing.

* * * * *

(f) The technical advisors from the Department of the Interior and the Bureau of Engraving and Printing will do a critical analysis of the entries that will be judged in the second round and advise the judges of any serious anatomical problems and/or any serious design problems for the engraver.

(g) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges, will be shown one at a time to the judges by the Contest Coordinator or by a contest staff member. The judges will vote by indicating a numerical score from one to five for each entry. The scores will be totaled to provide the entry score. The entries receiving the five highest scores will be advanced to the third round of judging.

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will annouce the winning entry as well as the entries that placed second and third.

(i) In case of a tie vote for first, second, or third place in the third round, the judges will vote again on the entries that are tied. The judges will vote using the same method as in rounds two and three.

(j) The selection of the winning entry by the judges will be final. Each contestant will be notified of the winning artist and the design. The winning artist will receive a pane of Duck Stamps signed by the Secretary of the Interior at the Federal Duck Stamp Contest the following year. The artists placing first, second and third will receive a framed commendation from the Director of the U.S. Fish and Wildlife Service.

Subpart D—Post-Contest Procedures

11. 91.31 is revised to read as follows:

§ 91.31 Return of entries after contest.

All entries will be returned by certified mail to the participating artists within 120 days after the contest, unless the artwork is selected to appear at one or more wildlife art expositions. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed one year from the date of the contest.

Dated: December 21, 1990.

Bruce Blanchard,

Acting Director.

[FR Doc. 91–2509 Filed 2–4–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 24
Tuesday, February 5, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[DA-91-002]

Providing Information Regarding Undue Price Enhancement Under the Capper-Volstead Act

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: This document gives notice of the procedure to be followed to provide information regarding undue price enhancement by a Capper-Volstead cooperative association.

FOR FURTHER INFORMATION CONTACT: Lorna Aldrich, Economic Research Service, U.S. Department of Agriculture, room 1132, 1301 New York Avenue NW., Washington, DC 20005–4788; telephone (202) 219–0880.

SUPPLEMENTARY INFORMATION: Section 1 of the Capper-Volstead Act (7 U.S.C. 291) grants a limited antitrust exemption to associations of producers (agricultural cooperatives) which are operated for the mutual benefit of the members of the association and which meet one or both of the following requirements:

(1) No member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or

(2) The association does not pay dividends on stock or membership capital in excess of 8 percent per year.

An additional requirement is that the association does not deal in the products of nonmembers to an amount greater in value than that handled by it for members.

Section 2 of the Capper-Volstead Act requires the Secretary of Agriculture to institute administrative cease and desist proceedings against an agricultural cooperative association if he has reason to believe that the association is monopolizing or restraining trade in interstate or foreign commerce to such an extent that the price of an agricultural product is unduly enhanced thereby. Information on activities by cooperative associations which may be unduly enhancing the price of an agricultural product may come from agencies within the Department of Agriculture, other Federal agencies, or from interested members of the public.

Any person having information that an agricultural association, as defined in the Capper-Volstead Act, is engaged in any practice which monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of an agricultural product is unduly enhanced by reason thereof may submit such information to the Secretary. Information which is submitted should be in writing and should contain a complete statement of facts detailing the price enhancement and the unlawful monopolization or restraint of trade alleged. The information should be sent to the following address: Assistant Secretary, Office of Economics, U.S. Department of Agriculture, Room 227–E, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250.

Authority: Capper-Volstead Act (42 Stat. 388, 7 U.S.C. 291, 292).

Signed at Washington, DC, on January 30, 1991.

Bruce L. Gardner,

Assistant Secretary for Economics.

[FR Doc. 91–2652 Filed 2–4–91; 8:45 am]
BILLING CODE 3410–18–M

Forest Service

Draft Supplement to the Final Environmental Impact Statement for the National Forests in Florida

AGENCY: Forest Service, USDA.
ACTION: Revised notice; expansion of scope and revised availability dates.

SUMMARY: The USDA Forest Service, National Forests in Florida, is expanding the scope of the proposed action for the supplement being prepared to the Final Environmental Impact Statement (FEIS) for their Land and Resource Management Plan (LRMP). The scope is being expanded to include the issue of oil and gas leasing on National Forest System lands in Florida. In addition, to allow sufficient time to adequately address and analyze all the issues, the Forest is revising the dates for availability of the draft and final supplements to the FEIS for the LRMP.

The agency invites written comments and suggestions that are within the scope of the revised proposed action.

DATES: Comments related to the issues to be addressed in the analysis should be received by March 8, 1991, to ensure timely consideration.

ADDRESSES: Send written comments and suggestions to Steve Fitch, Forest Supervisor, National Forest in Florida, suite 4061, 227 N. Bronough St., Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Mark Warren, Planning Staff Officer; (904) 681–7265.

SUPPLEMENTARY INFORMATION: The Notice of Intent to prepare a supplement to the FEIS for a proposed amendment to the LRMP for the National Forests in Florida was published in the Federal Register for March 21, 1990 (55 FR 10476–10477).

The notice identified the scope of the proposed action for the supplement and ten issues to be addressed. Since that time, new Forest Service regulations have been developed to implement provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. In accordance with these regulations, an oil and gas leasing analysis will be conducted. Based on this analysis as documented in the supplement to the FEIS, the following decisions will be made in the Record of Decision: (1) Identification of the lands, by management area, that will be available for leasing, (2) identification of specific lands for which consent to lease will be permitted, and (3) identification of stipulations for those areas where surface occupancy will be restricted or prohibited.

The draft supplement to the FEIS was scheduled to be filed with the Environmental Protection Agency (EPA) and be available for public review by February 1991. It is now expected to be available by November 1991. At that time EPA will publish a notice of availability of the draft supplement to the FEIS in the Federal Register.

The final supplement to the FEIS was scheduled to be completed by August 1991. It is now expected to be completed by May 1992.

Dated: January 29, 1991.

Robert B. Erickson,

Deputy Regional Forester.

[FR Doc. 91-2597 Filed 2-4-91; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Changes in Organization and Functions During Calendar Year 1990

AGENCY: Office of the Secretary, Department of Commerce.

SUMMARY: Following is a summary of Department of Commerce officials and units affected by major changes in authority, title, function, or structure during the past calendar year. Specific information on each action can be obtained by requesting a copy of the applicable Department Organization Order (DOO), also listed below:

Under Secretary for International Trade

DOO 10-3, Amendment 4, 6/29/90

Assistant Secretary for Administration

DOO 10-5, 2/26/90
DOO 10-5, Amendment 1, 8/24/90

Under Secretary for Economic Affairs

DOO 10-9, 3/7/90
DOO 10-9, 6/11/90

Assistant Secretary for Legislative & Intergovernmental Affairs

DOO 10-12, 1/19/90

Inspector General

DOO 10-13, Amendment 5, 5/3/90

Under Secretary for Oceans & Atmosphere & Administrator of the National Oceanic & Atmospheric Administration

DOO 10-15, Amendment 3, 11/20/90

Assistant Secretary for Technology Policy

DOO 10-18, 1/4/90

Executive Secretariat

DOO 15-1, Amendment 1, 7/13/90

Chief of Staff

DOO 15-20, Amendment 1, 7/13/90
DOO 15-20, Amendment 2, 7/13/90

Office of Policy Planning & Coordination

DOO 15-22, 4/4/90

Office of Federal Property Programs

DOO 20-1, Amendment 1, 8/24/90
DOO 20-1, Amendment 2, 11/9/90

Office of Finance and Federal Assistance

DOO 20-5, Revocation Notice, 8/24/90

Office of Management & Organization

DOO 20-7, Amendment 3, 8/24/90

Office of Personnel

DOO 20-8, 2/12/90
DOO 20-8, Amendment 1, 8/24/90
DOO 20-8, 10/10/90

Office of Administrative Operations

DOO 20-9, 11/9/90

Office of Personnel Operations

DOO 20-12, 10/10/90

Office of Information Resources Management

DOO 20-14, Amendment 1, 8/24/90

Office of Administrative Services Management

DOO 20-15, Amendment 3, 8/24/90

Office of Information Systems

DOO 20-20, Amendment 1, 8/24/90

Office of Procurement

DOO 20-26, 3/22/90
DOO 20-26, Amendment 1, 8/24/90

Office of Financial Management

DOO 20-27, 8/24/90

Office of Federal Assistance & Management Support

DOO 20-28, 8/24/90

Office of Inspector General

DOO 23-1, Amendment 1, 5/3/90

United States Travel & Tourism Administration

DOO 25-1, 6/18/90

Minority Business Development Agency

DOO 25-4B, 11/8/90

National Oceanic & Atmospheric Administration

DOO 25-5, Amendment 2, 2/12/90
DOO 25-5, Amendment 3, 9/24/90

National Telecommunications & Information Administration

DOO 25-7, Amendment 2, 6/1/90

National Institute of Standards & Technology

DOO 30-2A, Amendment 1, 6/11/90
DOO 30-2B, 9/19/90

National Technical Information Service

DOO 30-7B, Amendment 1, 7/20/90

Office of Chief Economist

DOO 35-7, 3/7/90

International Trade Administration

DOO 40-1, Amendment 3, 6/29/90

Economic Development Administration

DOO 45-1, 9/24/90

For Further Information Contact: Eleanor Miles, Office of Management and Organization, Department of Commerce, room 5317, Washington, DC 20230, Telephone (202) 377-5481.

Stephen C. Browning,

Director, Office of Management and Organization.

[FR Doc. 91-2581 Filed 2-4-91; 8:45 am]

BILLING CODE 3510-DK-M

Foreign-Trade Zones Board

[Order No. 508]

Resolution and Order Approving the Application of Arizona Technology Foreign-Trade Zone, Inc., for a Foreign-Trade Zone in the Tucson, AZ, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Arizona Technology Foreign-Trade Zone, Inc., filed with the Foreign-Trade Zones Board on April 9, 1990, requesting a grant of authority for establishing, operating and maintaining a general-purpose foreign-trade zone in Pima County, Arizona, adjacent to the Tucson Customs port of entry, the Board, finding the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Pima County, AZ

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under jurisdiction of the United States;

Whereas, Arizona Technology Foreign-Trade Zone, Inc. (the Grantee), has made application (filed April 9, 1990, FTZ Docket 15–90, 55 FR 14847, 4/19/90) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Pima County, Arizona, adjacent to the Tucson Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 174, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 30th day of January, 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–2687 Filed 2–4–91; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 507]

Approval for Expansion of Foreign-Trade Zone 136 Brevard County, FL Port Canaveral Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the Canaveral Port Authority, Grantee of Foreign-Trade Zone 136, has applied to the Board for authority to expand its general-purpose zone at the port terminal area and to add two sites in Brevard County, Florida, within the Port Canaveral Customs port of entry;

Whereas, the application was accepted for filing on October 27, 1989, and notice inviting public comment was given in the **Federal Register** on November 27, 1989 (Docket 25–89, 54 FR 48793), with amendments on January 31, 1989 (55 FR 4216, 2/7/90) and June 13, 1990 (55 FR 25855, 6/25/90);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval, subject to an activation limit of 500 acres at each of the three sites;

Whereas, the expansion is necessary to improve and expand zone services in the Brevard County, Florida, area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand the zone in accordance with the application filed on October 27, 1989, as amended, subject to the condition that any activation of approved zone space beyond 500 acres at each of the three zone sites requires further Board approval. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 29th day of January, 1991.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 91–2688 Filed 2–4–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–570–806]

Preliminary Determination of Sales at Less Than Fair Value: Silicon Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that imports of silicon metal from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination and have directed the Customs Service to suspend liquidation of all entries of silicon metal from the PRC, as described in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is

April 16, 1991. However, we may expedite this determination

EFFECTIVE DATE: February 5, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Maeder, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3965 or (202) 377–4929, respectively

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of silicon metal from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is April 16, 1991. However, we may expedite this determination.

Case History

Since the publication of our notice of initiation (initiating investigations on imports of silicon metal from the PRC, Argentina, and Brazil) on September 20, 1990, (55 FR 38716), the following events have occurred.

On October 5, 1990, the ITC published its preliminary determination, that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Argentina, Brazil and the PRC of silicon metal that are alleged to be sold in the United States at less than fair value (55 FR 36330).

On October 12, 1990, during a telephone conversation with the Commercial Attaché of the PRC Embassy in Washington DC (the Embassy), the Department was informed that the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters (the Chamber) was the organization in the PRC with information on the indentities of the exporters of silicon metal. Based on this conversation, on October 17, 1990, the Department sent a letter to the Chamber requesting its assistance in identifying all exporters to the United States of silicon metal and their supplying factories. No response to this request was ever received.

Also on October 17, 1990, Hofflinghouse & Company, a U.S. importer of silicon metal from the PRC and an interested party in this investigation, provided the Department with a list of its PRC suppliers.

On October 18, 1990, the Department presented its questionnaire to the Embassy of the PRC (the Embassy). In the cover letter to the questionnaire, we asked the Embassy to forward the questionnaire to each exporter of silicon metal, as well as each factory producing the product for export to the United States. We also explained that, as the Department was treating the PRC as a nonmarket economy for purposes of this investigation and as the Embassy has been deemed the proper recipient of the questionnaire, the Embassy, or the appropriate PRC official, must submit a full, consolidated response to the questionnaire on behalf of all state-owned producers and exporters of silicon metal.

On November 1, 1990, we received a request from one exporter, the China Hunan Provincial Import and Export Corporation (Hunan), for an extension until November 15, 1990, for the submission of its response to section A of the questionnaire. On November 5, 1990, we granted Hunan's extension request.

On November 5, 1990, we sent a letter to the Embassy informing it that the Department has been contacted by only one PRC exporter, Hunan. We asked the Embassy whether it had success in identifying other questionnaire recipients and, if so, whether it knew if responses would be submitted by the November 15, 1990, deadline. We also provided the Embassy with the list of PRC exporters that we received from Hofflinghouse & Company, in order to assist the Embassy in transmitting the questionnaire to the PRC producers and exporters of the subject merchandise. We explained that we would not be able to accept any response after November 15, 1990, unless an extension request was received in writing, along with an explanation as to why no response had been submitted prior to the November 1, 1990, section A deadline.

On November 8 and 9, 1990, we received notification from six PRC import/export companies that they had not received copies of the questionnaire. The companies requested that the Department forward the questionnaire to them.

On November 15 and 19, 1990, Hunan submitted its response to Sections A, C, and D of the questionnaire.

When the November 15 deadline passed without receiving a consolidated response to the questionnaire, or a response to our November 5 letter, representatives from the Department arranged to meet with PRC Embassy officials on December 4, 1990. During this meeting, the Department once again expressed concern with the Embassy's inability to supply the requested information in a timely manner. In spite of the Department's attempt to stress the urgency of the situation, the Embassy officials made no indication that they would be able to supply the requested information, nor did they express a desire to request an extension of time for the submission of this information.

On December 13 and 17, 1990, the Department sent letters to Hunan and each of the six import/export companies that had requested copies of the questionnaire. In the letters, we explained that we rely on the Embassy to forward the questionnaires to the appropriate recipients and require that a consolidated preliminary response incorporating information on all PRC exporters of the subject merchandise be submitted. We informed them that we would be unable to forward the questionnaires to any party or to consider any information they had already submitted, or intended to submit, individually.

On January 18, 1991, more than two months after the November 15 deadline and less than two months before the preliminary determination, the Embassy submitted a response which consolidated the sections A, C, and D sales information of Hunan and Xiamen Xing Xia Company, Ltd. (Xiamen) and provided partial information on three additional exporters. Because these submissions were extremely untimely, we removed them from the official record of this investigation and returned all copies of them to the Embassy, in accordance with 19 CFR 353.31(b)(2).

Also on January 18, 1991, the Aluminum Smelting and Refining Company, Inc. (ASRC), Timco, and the Aluminum Recycling Association (ARA), interested parties in this investigation, submitted comments. In these comments, the parties (1) opposed petitioners' allegation with regard to the existence of critical circumstances; (2) alleged that petitioners did not produce silicon metal with a silicon content of between 96 and 97.49 percent and chemical grade silicon and, therefore, the Department should rescind the investigation with respect to this merchandise; and, (3) argued that India is not the appropriate surrogate country for the PRC in this case. With regard to critical circumstances and the rescinding of the investigation, see the "Critical Circumstances" and "Standing" sections of this notice.

With regard to the use of India as a surrogate for the PRC, petitioners' use of India as a surrogate for the PRC was

found to be reasonable for purposes of initiating this investigation. Since we have decided to use the petition as best information available for purposes of this determination, as described in the "Best Information Available" section of this notice, we will continue to accept the Indian information contained in the petition.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less that 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used only as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation is March 1, 1990, through August 31, 1990.

Standing

In its letter of January 18, 1991, ARA challenged petitioners' standing to file on behalf of the domestic producers of the like product. This challenge is based on ARA's assertion that (1) silicon metal with a silicon content of between 96 and 97.49 percent, and silicon metal having a silicon content of between 97.50 but less than 99.99 percent, are different like products, and (2) petitioners do not produce silicon metal in the 96 to 97.49 percent range. The ITC has preliminarily determined that there is one like product, which includes all of the merchandise defined by the scope of this investigation. Furthermore, the ARA does not challenge the fact that petitioners do produce silicon metal in the higher range. Accordingly, we preliminarily determine that petitioners have standing to file on behalf of the domestic industry producing silicon metal covered by the scope of this investigation. The ARA should address any comments pertaining to the definition of like product to the ITC.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for sales of the subject merchandise in this investigation. In deciding whether to use best information available, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, exporters of silicon metal from the PRC were not able to do so.

During the course of this investigation, the Department encountered serious problems in obtaining the price and production data needed for its analysis. These problems were due to the fact that the Embassy was never able to identify the universe of potential respondents in the PRC or provide adequate price and production data. This information is necessary so that the Department can base its analysis on sales data that is reflective of the exporting industry. As outlined in the "Case History" section of this notice, the Department made repeated attempts to impress upon officials at the Embassy the need for them to submit to the Department a consolidated response incorporating information on sales of silicon metal to the United States by all producers and exporters in the PRC. In spite of the Department's repeated attempts, we did not receive a response in a timely manner and in the form required. Consequently, we based our preliminary determination in this investigation on best information available. As best information available, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from the PRC. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In determining knowledge of dumping, we normally consider margins of 25 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A). (*See, e.g.*, Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Because we are relying on the petition for purposes of our preliminary determination regarding sales at less than fair value (*See*, the "Best Information Available" section of this notice), we have also relied on the petition as best information available in determining knowledge of dumping.

Average margins contained in the petition for silicon metal exceed 25 percent. Therefore, in accordance with section 735(a)(3)(A)(ii), we determine that knowledge of dumping existed for silicon metal from the PRC.

In its letter of January 18, 1991, ARA challenged petitioners' contention that the Department can impute knowledge of dumping because there is a history of the PRC dumping silicon metal into the European Community (EC) market (*See*, Council Regulation (EEC) No. 2200/90 of 27 July 1990). However, since the Department has relied on information contained in the petition to impute knowledge of dumping, there is no need to consider the EC's outstanding antidumping duty order on silicon metal from the PRC.

Because the Department did not receive a timely response in the form required, we have relied upon best information available for determining whether there have been massive imports of silicon metal. As best information available, we used the Commerce Department's import statistics to measure import levels of silicon metal from the PRC.

Pursuant to section 353.16(g) of the Department's regulations, in making critical circumstances determinations, the Department normally considers the period beginning on the date the proceeding begins and ending at least three months later. The Department considers this period because it is the period immediately prior to a preliminary determination in which

exporters of the subject merchandise could take advantage of their knowledge of the antidumping investigation to increase exports to the United States without being subject to antidumping duties. (*See, e.g.*, Final Determination of Sales at Less than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12552, April 15, 1988.) For purposes of this preliminary determination, however, we are using as our comparison period the two months following the month of the filing of the petition (*i.e.*, September and October 1990) because (1) we recognize that, due to the lag between export and import, the import statistics for August reflect exports made prior to the date on which the proceeding began (*i.e.*, August 24, 1990) and (2) we only have available two months of import data. Assuming that additional data becomes available by the time of our final determination, we will reexamine our analysis using a three-month comparison period.

Based on our analysis of the available monthly Commerce Department import statistics, we have preliminarily found that there is reasonable basis to believe or suspect that imports of silicon metal have been massive over a relatively short period of time. We also examined Commerce Department import statistics to ensure that the increase in imports did not simply reflect seasonal trends. The data did not indicate any seasonal increases in shipments. Therefore, we find that the requirements of section 733(e)(1)(B) have been met with respect to silicon metal from the PRC.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of silicon metal from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to 139.49 percent on all entries of silicon metal from the PRC. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 4, 1991, and rebuttal briefs no later than March 11, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 1 p.m. on March 13, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: January 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-2689 Filed 2-4-91; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 90-00016]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 90-00016.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to International Trading Organization, Inc. ("ITO"). This notice summaries the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Members (in Addition to the Applicant)

Dixie Chemical Company, Inc., Houston, Texas (controlling entity: DX Holding, Inc., Houston, Texas); Flint Ink, Cincinnati, Ohio (controlling entity: none); Inolex Chemical Company, Philadelphia, Pennsylvania (controlling entity: none); Koch Chemical Company, Wichita, Kansas (controlling entity: Koch Refining Co., Wichita, Kansas); PCR, Inc., Jacksonville, Florida (controlling entity: none); Sherex Chemical Company, Dublin Ohio (controlling entity: Schering Aktiengesellschaft, Berlin, Germany).

Export Trade

1. Products

Alkyds (Standard Industrial Classification Code (SIC) 2821400); presscake/dry pigment flushed color (SIC 2865300); pigment dispersions, including black (SIC 2851533); waterproofing compounds (SIC 2899581); specific antineoplastic agents (SIC 2834145); laboratory reagents and chemicals for research purposes only (SIC 2869537); textile finishing agents (SIC 2843061); bulk surface active agents (SIC 2843085); other chemical specialties (SIC 2899597); industrial organic chemical (SIC 2869598); and miscellaneous end-use chemicals and chemical products (SIC 2869600).

2. Services

Engineering, design and related services related to Products and to contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Technology Rights

Proprietary rights to all kinds of technology associated with Products or Services including but not limited to patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models (including petty patents), plant breeders rights, industrial designs, and *sui generis* forms of biotechnology protection and computer software protection.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; taking title to goods; services related to compliances with customs requirements; and liaison with foreign government agencies, trade associations, and banking institutions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. ITO and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products, Services, and/or Technology Rights in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products, Services, and/or Technology Rights by Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to specifications and requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products, Services, and/or Technology Rights, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-Member Suppliers to sell their Products and/or Services, and/or non-competing Technology Rights or offer their Export Trade Facilitation Services through the certified activities of ITO and/or its Members;

g. Coordinate with respect to the servicing of Products in Export Markets, including the establishment of joint service and training centers in such markets;

h. To the extent permitted in Paragraph 8 below, license associated Technology Rights in conjunction with the sale of Products;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together groups of Members to plan and discuss how to fulfill the Product, Service, and/or Technology Rights requirements of specific export customers or Export Markets;

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate service and training centers in Export Markets, and to provide Export Trade Facilitation Services to Members; and

l. Jointly procure transportation services for Products exported or in the course of being exported for any or all of the Members, or non-Members.

2. Subject to paragraph 8 below and to appropriate safeguards limiting the trade secret and know-how access of other Members to those personnel acting as Export Trade Intermediaries, ITO and/or its Members may enter into agreements wherein ITO and/or one or more Members agree to act in certain countries or Export Markets as the Members' exclusive or nonexclusive Export Intermediary for Products, Services and/or Technology Rights in that country or Export Market. In such agreements, (i) ITO or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or Export Market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ITO or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or Export Market, either directly or through any other Export Intermediary.

3. ITO and/or its Members may exchange and discuss the following types of information:

a. Information that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services and/or Technology Rights in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by ITO and its Members;

d. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

g. Information about ITO or its Members' export operations, including without limitation sales and distribution networks established by ITO or its Members in Export Markets, and prior export sales by Members (including export price information).

4. ITO may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by ITO itself, or by agreement with Members or other parties.

5. ITO and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. ITO and/or its Members may refuse to provide Export Trade Facilitation Services, or participation in the other activities described in paragraphs one through five above, to non-Members.

7. ITO and/or its Members may forward to the appropriate individual

Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

8. Members may license and sub-license Technology Rights in Export Markets to non-Members, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-Member without coordination with ITO or any other Member. Such licenses and sub-licenses may: Convey exclusive or non-exclusive rights in Export Markets; impose requirements as to the prices at which Products or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licensees and sub-licensees as to fields of use, or maximum sales or operations, in Export Markets; impose territorial restrictions (relating to any Export Market) on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback to the licensor Member of rights (in Export Markets) to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and Services) to be used, sold, or leased as a condition of the license of Technology Rights.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product, Service, Technology Right, and/or Export Trade Facilitation Service, whether a Member or non-Member.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: January 30, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-2691 Filed 2-4-91; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 90-2A005.

SUMMARY: The Secretary of Commerce has issued an amended Export Trade Certificate of Review to the California Kiwifruit Commission ("CKC") and California Kiwifruit Exporters Association ("CKEA") on January 29, 1991. The original Certificate was issued on August 10, 1990 (55 FR 33740, August 17, 1990) and previously amended November 27, 1990 (55 FR 50204, December 5, 1990) to add the California Kiwifruit Exporters Association ("CKEA") as a "co-certificate holder".

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the gound that the determination is erroneous.

Description of Amended Certificate

CKC's and CKEA's Export Trade Certificate of Review has been amended to:

1. Add the following three companies as "Members" within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)): Coast-To-Coast Produce Co., San Luis Obispo, California; Nash De Camp Company, Visalia, California; and Tufts Ranch, Winters, California;

2. Delete Pandol Brothers, Inc., Delano, California as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(l));

3. Clarify that CKEA was established by CKC to conduct Export Trade Facilitation Services on behalf of its Members, and to participate in the Export Trade Activities and Methods of Operation contained in CKC's original certificate;

4. Clarify that the actual physical export of kiwifruit will not take place through CKC, but will be performed by individual Members and facilitated by CKC and/or CKEA;

5. Add the joint purchase of brokerage services by CKC, CKEA and/or any Member to the Export Trade Activities and Methods of Operation, provided that each Member shall remain free to pay or negotiate brokerage fees independently, and provided that information may be exchanged among Members concerning the joint purchase of brokerage services; and

6. Provide that CKEA directors may be elected by the Members casting votes weighted in proportion to the volume of the Members' kiwifruit exports.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

EFFECTIVE DATE: November 1, 1990.

Dated: January 31, 1991.

George Muller,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 91-2690 Filed 2-4-91; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Modification No. 2 to Permit No. 663]

Marine Mammals; Issuance of Modification: Dr. Bernd Wursig and Mr. Salvadore Cerchio (P36B)

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 220.24 of the regulations governing endangered species (50 CFR parts 217-222), Scientific Research No. 663 issued to Dr. Bernd Wursig and Mr. Salvadore Cerchio, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, California 95039, on February 21, 1989, and modified on January 11, 1990 (FR 55 1861) is further modified in the following manner:

Section A.1 is deleted and replaced by:

1. Up to 500 humpback whales (*Megaptera novaeangliae*) may be taken annually by inadvertent harassment during photo-identification studies.

Issuance of this Permit and modification, as required by the Endangered Species Act of 1973, is based on the finding that such Permit as modified: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This Permit, as modified, was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species. This modification becomes effective upon publication in the Federal Register.

The Permit and modification is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Protected Species Coordinator, Pacific Area Office, Southwest Region, 2570 Dole Street, Honolulu, Hawaii 96822.

Dated: January 30, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–2636 Filed 2–4–91; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 558]

Marine Mammals; Permit Modification: Dr. Bernd Wursig and Ms. Nancy Black (P36B)

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 630 issued to Dr. Bernd Wursig and Ms. Nancy Black, Moss Landing Marine Laboratory, P.O Box 450, Moss Landing, California 95039, on April 13, 1988, and modified November 30, 1990 (55 FR 49934), is further modified as follows:

Section B.7 is changed to read:

B.7 The authority to take Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) by harassment or otherwise shall extend from the date of issuance through December 31, 1993. The terms and conditions of this Permit (sections B and C) shall remain in effect."

This modification becomes effective upon publication in the Federal Register.

Documents pertaining to the Permit and all modifications are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910.

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: January 30, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–2637 Filed 2–4–91; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 6 to Permit No. 413]

Marine Mammals; Permit Modification: Southwest Fisheries Center

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR part 222), Scientific Research Permit No. 413 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on April 20, 1983 (48 FR 17638) as modified on July 6, 1983 (48 FR 31062), May 11, 1984 (49 FR 20047), July 11, 1985 (50 FR 28238), November 28, 1986 (51 FR 43066), and November 13, 1987 (52 FR 43637) is further modified as follows:

Section B.10 is added:

10. Blood samples collected under authority of this Permit may be exported to appropriate laboratories for tests for morbillivirus.

This modification becomes effective upon publication in the Federal Register.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Modification was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents pertaining to the Permit and Modifications are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 30, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–2638 Filed 2–4–91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Harmonized Tariff Schedule Classification Numbers for Certain Part-Categories for Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Various Countries

January 31, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending certain part-categories with Harmonized Tariff Schedule numbers.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Brian F. Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after February 1, 1991, regardless of the date of export, certain HTS classification numbers for part-Categories 359–H, 459–W and 659–H are being changed on all visa and certification arrangements and all import controls for countries with part-Categories 359–H, 459–W and 659–H. These administrative changes are due to U.S. Customs reclassification of visors as headgear in Chapter 65 of the

Harmonized Tariff Schedule. Part-category coverage for these categories will remain the same.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 31, 1991.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control and counting directives issued to you by the Chairman of CITA, which include cotton, wool and man-made fiber textile products in part-Categories 359–H, 459–W and 659–H, produced or manufactured in various countries and entered into the United States for consumption or withdrawn from warehouse for consumption on and after February 1, 1991, regardless of the date of export.

This directive amends, but does not cancel, all directives issued to you which establish visa requirements for part-Categories 359–H, 459–W and 659–H for all countries for which visa arrangements are in place with the United States Government.

Effective on February 1, 1991, you are directed to make the changes shown below for all countries with part-Categories 359–H, 459–W and 659–H. These changes are effective for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after February 1, 1991, regardless of the date of export.

Category	Obsolete No.	New No.
359–H.....	6505.90.1530	6505.90.1540
459–W.....	6505.90.4060	6505.90.4090
659–H.....	6505.90.5060	6505.90.5090
	6505.90.6080	6505.90.6090
	6505.90.7060	6505.90.7090
	6505.90.8060	6505.90.8090

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–2686 Filed 2–4–91; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records Notices

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Amendment of a Record System.

SUMMARY: The Office of the Secretary of Defense proposes to amend a record system to its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The amended record system notice is set forth below.

DATES: This action will be effective March 7, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, room 5C315, The Pentagon, Washington, DC 20301–1155. Telephone (703) 697–2501 or Autovon 227–2501.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
50 FR 47087, Nov. 14, 1985
51 FR 11807, Apr. 7, 1986
51 FR 17508, May 13, 1986
51 FR 44668, Dec. 11, 1986
52 FR 23334, June 19, 1987
53 FR 15868, May 4, 1988
53 FR 27894, Jul. 25, 1988
54 FR 33756, Aug. 16, 1989
54 FR 43314, Oct. 24, 1989
55 FR 17655, Apr. 26, 1990
55 FR 20180, May 15, 1990
55 FR 21429, May 24, 1990
55 FR 35449, Aug. 30, 1990
55 FR 49405, Nov. 28, 1990

This amendment is not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a), which required the submission of an altered record system report. The specific changes to the record system are set forth below followed by the record system notice published in its entirety, as amended.

Dated: January 29, 1991.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

DHA 04.0

System name:

Dod Bone Marrow Donor Program.

Changes:

Purpose(s):

Delete entire entry and replace with "To tissue type as many donors as possible for inclusion in the national registry of marrow donors in order to offer patients requiring bone marrow transplants access to as many potential donors as possible for the purpose of obtaining a compatible match.

To the National Coordinating Center for the purpose of obtaining a marrow match. Information released will consist of DIN, donor's race, date of birth and sex only.

To the National Coordinating Center for the purpose of obtaining insurance coverage for the donor. Information released will consist of name, address, Social Security Account and date of birth. Name and address only for the purpose of direct informational mailing (in such a way that the individual is not linked to his or her donor identification number of HLA-type).

To a NMDP-approved civilian medical facility in only those cases where required medical examination and/or actual marrow procurement is performed.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entire entry and replace with "To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

To the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

To the Merit Systems Protection Board, including the Office of Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including investigation, and such other functions, promulgated in 5 U.S.C. sections 1205 and 1206, or as may be authorized by law.

* * * * *

Retention and disposal:

Paper records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Disposition will be according to the following schedule:

a. For persons who have donated bone marrow: Each record will be maintained 5 years beyond the known death of the marrow recipient and then destroyed. The donor will be notified by mail when this is done.

b. For persons who are accepted as donors but not requested to provide a transplant:

(1) Upon leaving the Federal service (military or civilian), if the potential donor does not elect to continue participation through transfer to a civilian program, his/her records will be destroyed. The potential donor will be notified by mail when this is done.

(2) At age 56 the potential donor's records will be destroyed and notification will be sent by mail when this is done.

c. For persons who are accepted as donors but who subsequently decline further participation in this program, all records will be destroyed upon notification in writing of withdrawal.

* * * * *

DHA 04.0

SYSTEM NAME:

DoD Bone Marrow Donor Program.

SYSTEM LOCATION:

Primary system: Naval Medical Research Institute, Bethesda, MD 20814–5055.

National Marrow Donor Program (NMDP) Collection Centers at the following locations:

Alta Bates-Herrick Hospital, Bone Marrow Transplant Program, 3001 Colby Street, Berkeley, CA 94705.

Baylor University Medical Center, Bone Marrow Transplant Program, Sammons Tower, suite 410, 3500 Gaston Avenue, Dallas, TX 75246.

Children's Hospital Medical Center, Division of Hematology/Oncology, Bone Marrow Donor Program, Elland & Bethesda Avenues, Cincinnati, OH 45229.

City of Hope National Medical Center, Blood Transfusion Services, 1500 E. Durate Road, Duarte, CA 91010.

Cleveland Clinic Foundation, 9500 Euclid Avenue, Cleveland, OH 44106.

Dana Farber Cancer Institute, Dana 1838, 44 Binney Street, Boston, MA 02115.

Dartmouth/Hitchock Medical Center, Hematology/Oncology Department, Vail Building, room 56, P.O Box HB–7923, Hanover, HN 03756.

Emory Clinic, Department of Hematology, 1365 Clifton Road, Northeast, Atlanta, GA 30322.

Georgetown University Hospital, Lombardi Cancer Research Center, Bone Marrow Transplantation Program, 3800 Reservoir Road, Northwest, Washington, DC 20007.

Genesee Hospital, 224 Alexander Street, Rochester, NY 14607, HCA Weslery Medical Center, 3243 East Murdock, suite 300, Wichita, KS 67208.

Hahnemann University Hospital, Broad & Vine Street, 8102 N.C.B., Philadelphia, PA 19102.

The Johns Hopkins Oncology Center, Bone Marrow Transplant Program, 600 North Wolfe Street, Baltimore, MD 21205.

Kaiser Health Center—East, 3414 North Kaiser Center Drive, Portland, OR 97227.

Kansas City Internal Medicine, 6420 Prospect Avenue, T101, Kansas City, MO 64132.

LSU Medical School, Department of Medicine, 1524 Tulane Avenue, New Orleans, LA 70112.

Medical College of Wisconsin, Department of Medicine, Milwaukee County Medical Complex, 8700 West Wisconsin Avenue, Milwaukee, WI 53233.

Memorial Sloan-Kettering Cancer Center, 1275 York Avenue, New York, NY 10021.

Mercy General Hospital, 3939 "J" Street #300, Sacramento, CA 95819.

Methodist Hospital of Indiana, Inc., Bone Marrow Transplantation Program, 1701 North Senate Boulevard, Indianapolis, In 46202.

Montefiore Hospital, Hematology/Oncology Unit, 3459 Fifth Avenue, Pittsburgh, PA 15213.

The Ohio State University, Bone Marrow Transplant Program, 10 North Doan Hall, 410 West Tenth Avenue, Columbus, OH 43210–1228.

Ohio State University Hospital, 410 West Tenth Avenue, N1025 Doan Hall, Columbus, OH 43210.

Pacific Presbyterian Hospital, Division of Bone Marrow Transplant, 2351 Clay Street, suite 414, San Francisco, CA 94115.

Poudre Valley Hospital, Bone Marrow Transplant Program, 1024 LeMay Avenue, Fort Collins, CO 80524.

St. Frances Hospital, Cancer Care Associates, 6835 South Canton, Tulsa, OK 74136.

Scripps Clinic Research Foundation, Weingart Center for Bone Marrow Transplantation, 10666 North Torrey Pines Road, Maildrop MS–312, LaJolla, CA 92037.

Stanford University Medical Center, Bone Marrow Transplant Program, 300 Pasteur Drive, room H–1353, Stanford, CA 94305–5290.

Tufts New England Medical Center, Bone Marrow Transplant Program, 750 Washington Street, 245, Boston, MA 02111.

UCLA Center for Health Science, Bone Marrow Transplant Program, 10833 LeConte, room 42–121, Los Angeles, CA 90024.

UCSD Medical Center, Bone Marrow Transplant Program, 225 Dickinson Street, H–811K, San Diego, CA 92103.

United Blood Services, 1515 University Avenue, P.O. Box 25445, Albuquerque, NM 87125.

University of California Medical Center, Hematology Services, P.O. Box 0324, room A–502, 400 Parnassus, San Francisco, CA 94143.

University of Connecticut Medical Center, Department of Hematology/Oncology, Bone Marrow Transplantation Program, 263 Farmington Avenue, Farmington, CT 06032.

University of Florida, College of Medicine, Bone Marrow Transplant Program, Box J277 JHMHC, Gainesville, FL 32610.

University of Iowa Hospitals & Clinics, Division of Hematology/Oncology, Adult Bone Marrow Transplant Program, Iowa City, IA 52242.

University of Minnesota Hospital & Clinic, Bone Marrow Transplant Program, Box 803, UMHC, Harvard Street at East River Road, Minneapolis, MN 55455.

University of Nebraska Medical Center, 42nd & Dewey Avenue, Omaha, NE 68105.

University of Oklahoma, Hematology Section, Health Sciences, P.O. Box 26901, Oklahoma City, OK 73190.

University of Wisconsin Hospitals & Clinics, Hematology H4/540, Bone Marrow Transplant Program, 600 Highland Avenue, Madison, WI 53792.

Virginia Mason Clinic, Medical Oncologist, 925 Seneca, P.O. Box 900, Seattle, WA 98111.

Wake Forest University Cancer Center, Section of Hematology/Oncology, 300 South Hawthorne Road, Winston Salem, NC 27103.

Wayne State Univ/Harper Grace Hospitals, School of Medicine, Division of Hematology/Oncology, P.O. Box 02188/John R., Detroit, MI 48201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military and civilian personnel and their dependents who have volunteered for and been

accepted as potential bone marrow donors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Donor registration and consent forms (or a notation in writing if the consent was obtained telephonically) including consent for testing, and consent to donate a blood sample for HLA (human leukocyte antigen) typing; a consent to donate platelets; a consent to donate bone marrow, if compatible with a patient; a consent to undergo anesthesia if selected to donate marrow; report of physical examination of the donor to include complete medical history and the results of laboratory and other tests (X–ray, electrocardiogram, virology, etc.), and examining physician's report to the donor center; information pertinent to the collection process including post-hospitalization follow-up; donor's written consent to be returned to the registry for further donations. Data items include: Name, Social Security Number, a bar-coded Donor Identification Number (DIN), and HLA type; donor's address, place of work, home and work telephone numbers; names, addresses and telephone numbers of donor's relatives and friends; donor's race/ethnicity; hospital and hospital provider number, city and State; date and time of marrow recovery and transplantation; name of transplant center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136 and Executive Order 9397.

PURPOSE(S):

To tissue type as many donors as possible for inclusion in the national registry of marrow donors in order to offer patients requiring bone marrow transplants access to as many potential donors as possible for the purpose of obtaining a compatible match.

To the National Coordinating Center for the purpose of obtaining a marrow match. Information released will consist of DIN, donor's race, date of birth and sex only.

To the National Coordinating Center for the purpose of obtaining insurance coverage for the donor. Information released will consist of name, address, Social Security Account and date of birth. Name and address only for the purpose of direct informational mailing (in such a way that the individual is not linked to his or her donor identification number or HLA-type).

To a NMDP-approved civilian medical facility in only those cases where required medical examination and/or actual marrow procurement is performed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

To the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

To the Merit Systems Protection Board, including the Office of Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on microcomputers.

RETRIEVABILITY:

Hard copy is filed by donor's name. Electronic records may be accessed by search on any information field. Retrievable fields are donor's name, Social Security Number or Donor Identification Number, HLA type, date of birth, sex, and racial/ethnic group.

STORAGE:

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling Privacy Act data. Hard copy records are maintained in locked cabinets in restricted access areas. Computer files are accessed on a password-protected stand-alone microcomputer system with mechanical locks for additional protection.

RETENTION AND DISPOSAL:

Paper records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Disposition will be according to the following schedule:

a. For persons who have donated bone marrow: Each record will be maintained 25 years beyond the known death of the marrow recipient and then destroyed. The donor will be notified by mail when this is done.

b. For persons who are accepted as donors but not requested to provide a transplant:

(1) Upon leaving the Federal service (military or civilian), if the potential donor does not elect to continue participation through transfer to a civilian program, his/her records will be destroyed. The potential donor will be notified by mail when this is done.

(2) At age 56 the potential donor's records will be destroyed and notification will be sent by mail when this is done.

c. For persons who are accepted as donors but who subsequently decline further participation in the program, all records will be destroyed upon notification in writing of withdrawal.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D366, the Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D366, The Pentagon, Washington, DC 20301–1200, where a log of these requests will be maintained.

The request should contain the full name and individual's Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D366, The Pentagon, Washington, DC 20301–1200.

The request should contain the individual's full name, Social Security Number, and, if applicable, the name of the medical facility from the list appended hereto where examinations, tests, bone marrow collection, and follow-up procedures were conducted.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial

determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Information is obtained from record subjects and attending medical specialists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

National Marrow Donor Program Collection Centers

Alta bates-Herrick Hospital, Bone Marrow Transplant Program, 3001 Colby Street, Berkeley, CA 94705
Baylor University Medical Center, Bone Marrow Transplant Program, Sammons Tower, suite 410, 3500 Gaston Avenue, Dallas, TX 75246
Children's Hospital Medical Center, Division of Hematology/Oncology, Bone Marrow Donor Program, Elland & Bethesda Avenues, Cincinnati, OH 45229
City of Hope National Medical Center, Blood Transfusion Services, 1500 E. Durate Road, Duarte, CA 91010
Cleveland Clinic Foundation, 9500 Euclid Avenue, Cleveland, OH 44106
Dana Farber Cancer Institute, Dana 1838, 44 Binney Street, Boston, MA 02115
Dartmouth/Hitchcock Medical Center, Hematology/Oncology Department, Vail Building, room 56, P.O. Box HB–7923, Hanover, NH 03756
Emory Clinic, Department of Hematology, 1365 Clifton Road, Northeast, Atlanta, GA 30322
Georgetown University Hospital, Lombardi Cancer Research Center, Bone Marrow Transplantation Program, 3600 Reservoir Road, Northwest, Washington, DC 20007
Genesee Hospital, 224 Alexander Street, Rochester, NY 14607, HCA Weslery Medical Center, 3243 East Murdock, suite 300, Wichita, KS 67208
Hahnemann University Hospital, Broad & Vine Street, 8102 N.C.B., Philadelphia, PA 19102
The Johns Hopkins Oncology Center, Bone Marrow Transplant Program, 600 North Wolfe Street, Baltimore, MD 21205
Kaiser Health Center-East, 3414 North Kaiser Center Drive, Portland, OR 97227
Kansas City Internal Medicine, 6420 Prospect Avenue, T101, Kansas City, MO 64132
LSU Medical School, Department of Medicine, 1524 Tulane Avenue, New Orleans, LA 70112
Medical College of Wisconsin, Department of Medicine, Milwaukee County Medical Complex, 8700 West Wisconsin Avenue, Milwaukee, WI 53233
Memorial Sloan-Kettering Cancer Center, 1275 York Avenue, New York, NY 10021
Mercy General Hospital, 3939 "J" Street #300, Sacramento, CA 95819
Methodist Hospital of Indiana, Inc., Bone Marrow Transplantation Program, 1701 North Senate Boulevard, Indianapolis, IN 46202
Montefiore Hospital, Hematology/Oncology Unit, 3459 Fifth Avenue, Pittsburgh, PA 15213
The Ohio State University, Bone Marrow Transplant Program, 10 North Doan Hall, 410 West Tenth Avenue, Columbus, OH 43210–1228
Ohio State University Hospital, 410 West Tenth Avenue, N1025 Doan Hall, Columbus, OH 43210
Pacific Presbyterian Hospital, Division of Bone Marrow Transplant, 2351 Clay Street, suite 414, San Francisco, CA 94115
Poudre Valley Hospital, Bone Marrow Transplant Program, 1024 LeMay Avenue, Fort Collins, CO 80524
St. Frances Hospital, Cancer Care Associates, 6835 South Canton, Tulsa, OK 74136
Scripps Clinic Research Foundation, Weingart Center for Bone Marrow Transplantation, 10666 North Torrey Pines Road, Maildrop MS–312, LaJolla, CA 92037
Stanford University Medical Center, Bone Marrow Transplant Program, 300 Pasteur Drive, room H–1353, Stanford, CA 94305–5290
Tufts New England Medical Center, Bone Marrow Transplant Program, 750 Washington Street, 245, Boston, MA 02111
UCLA Center for Health Science, Bone Marrow Transplant Program, 10833 LeConte, room 42–121, Los Angeles, CA 90024
UCSD Medical Center, Bone Marrow Transplant Program, 225 Dickinson Street, H–811K, San Diego, CA 92103
United Blood Services, 1515 University Avenue, P.O. Box 25445, Albuquerque, NM 87125
University of California Medical Center, Hematology Services, P.O. Box 0324, room A–502, 400 Parnassus, San Francisco, CA 94143
University of Connecticut Medical Center, Department of Hematology/Oncology, Bone Marrow Transplantation Program, 263 Farmington Avenue, Farmington, CT 06032
University of Florida, College of Medicine, Bone Marrow Transplant Program, Box J277 JHMHC, Gainesville, FL 32610
University of Iowa Hospitals & Clinics, Division of Hematology/Oncology, Adult Bone Marrow Transplant Program, Iowa City, IA 52242
University of Minnesota Hospital & Clinic, Bone Marrow Transplant Program, Box 803, UMHC, Harvard Street at East River Road, Minneapolis, MN 55455
University of Nebraska Medical Center, 42nd & Dewey Avenue, Omaha, NE 68105
University of Oklahoma, Hematology Section, Health Sciences, P.O. Box 26901, Oklahoma City, OK 73190
University of Wisconsin Hospitals & Clinics, Hematology H4/540, Bone Marrow Transplant Program, 600 Highland Avenue, Madison, WI 53792
Virginia Mason Clinic, Medical Oncologist, 925 Seneca, PO Box 900, Seattle, WA 98111
Wake Forest University Cancer Center, Section of Hematology/Oncology, 300 South Hawthorne Road, Winston Salem, NC 27103
Wayne State Univ/Harper Grace Hospitals, School of Medicine, Division of Hematology/Oncology, P.O. Box 02188/John R., Detroit, MI 48201

[FR Doc. 91–2443 Filed 2–4–91; 8:45 am]
BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meetting: 6–7–8 February 1991.

Time: 0800–1700

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) 1991 Summer Study on The Soldier As A System will hold a planning meeting to discuss and clarify any issues with respect to the purpose of the study, and will plan out the study activities required prior to the completion date of 30 September 1991. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board

[FR Doc. 91–2793 Filed 2–4–91; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Construction Productivity Advancement Research (CPAR) Program

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of availability

SUMMARY: The purpose of this notice is to inform potential applicants of a program of cost-shared research, development and technology transfer (R&D) projects between the U.S. Army Corps of Engineers (Corps) and the U.S. construction industry. The purpose of the Construction Productivity Advancement Research (CPAR) Program is to assist the U.S. construction industry in enhancing its productivity and domestic and international competitive position through the development and reduction-to-practice of advanced technologies,

equipment, materials and management systems.

DATES: Effective date is February 4, 1991. Proposals will be accepted until April 5, 1991.

ADDRESSES: Proposals for the Fiscal Year 1991 CPAR Program should be submitted to the Corps laboratories identified in the CPAR Guidelines for Participation, dated January 1991. Copies of the Guidelines may be obtained by writing to: HQUSACE, Attn: CERD–C; 20 Massachusetts Avenue, NW., Washington, DC 20314–1000, or by calling (202) 272–0257.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse A. Pfeiffer, Jr., P.E.; HQUSACE, CERD–C; 20 Massachusetts Avenue, NW., Washington, DC 20314–1000, or call (202) 272–1846 or 272–0257.

SUPPLEMENTARY INFORMATION: CPAR is a cost-shared partnership between the Corps, the U.S. construction industry (which includes contractors, equipment and material suppliers, architects, engineers, financial organizations, and others), public and private foundations, non-profit organizations, academic institutions, state and local governments and other entities who are interested in enhancing construction productivity and competitiveness. CPAR was created to help the domestic construction industry improve productivity and regain its competitive edge nationally and internationally by building on the foundation of the existing Corps Construction R&D Program and laboratory resources through an expansion and leveraging effect that cost-shared partnerships provide. The objective of CPAR is to facilitate productivity improving research, development and application of advanced technologies through cooperative R&D, field demonstration, licensing agreements and other means of technology transfer and reduction-to-practice. Advancing the productivity and competitiveness of the U.S. construction industry will provide savings in construction costs for the Government and U.S. industries, and result in a boost to the U.S. economy in general. R&D efforts conducted under CPAR will be based on proposals received from U.S. construction industry entities and others, as noted above, which can be addressed effectively by a partnership and which will benefit both the U.S. construction industry and the Corps.

Participation in CPAR is open to any U.S. private firm, including corporations, partnerships, limited partnerships and industrial development organizations; public and private foundations; academic institutions; non-profit organizations; units of state and local governments; and others who have an interest in and the capability to address CPAR objectives. As provided by law, special consideration will be given to small business firms and consortia involving small business firms. Preference will be given to business units located in the United States that agree to substantially manufacture and apply the products in the United States. Consideration will be given to a potential partner that is subject to the control of a foreign company or government if that foreign government permits U.S. agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

The cost of each CPAR project will be shared by the Corps and the U.S. construction industry partner(s). Specific cost-sharing terms will be negotiated for each proposed project prior to submission of the proposal to HQUSACE for approval. "In-kind" services and/or use of facilities may be considered in arriving at a cost-sharing agreement. As required by law, not more that fifty (50) percent of the total cost of a CPAR project will be provided by the Corps and not less than five (5) percent of the U.S. construction industry partner's share of the cost must be contributed in cash for products and/or services which do not originate from within its own resources. The Corps and the U.S. construction industry partner(s) may each contribute personnel, services, facilities, property, patent licenses (or assignment or options to the patent license) and money. No costs previously incurred by the Corps or the U.S. construction industry partner(s) on the subject matter of the CPAR project may be recovered in the cost-sharing agreement.

A CPAR Cooperative Research and Development Agreement (CPAR–CRDA) specific to each project will be negotiated between the Corps and the U.S. construction industry partner(s). The CPAR–CRDA is defined by law as neither a procurement contract nor an assistance agreement (grant or cooperative agreement). The CPAR–CRDA will contain, in addition to the cost-sharing terms, all other conditions and responsibilities necessary to complete the project and transfer the technology, including rights to inventions.

It is anticipated that one of the most effective ways of assuring the new technology is disseminated to the public is to provide the U.S. construction industry partner(s) with a proprietary "ownership" interest in the new technology. Therefore, to the extent permitted by law, the Corps will generally grant to the industry partner(s) an option to licenses or assignments for any intellectual property made in whole or in part by a Federal employee under the CPAR–CRDA, retaining a non-exclusive, non-transferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world on behalf of the Government. The Corps may, without further notice to others, agree to negotiate an exclusive license or waive title to intellectual property if such actions would facilitate commercialization and use of the technology. To the greatest extent possible and appropriate, licensing and assignments will be on a non-exclusive basis. In some cases, where appropriate, royalties will be negotiated and collected by the Government in exchange for such licenses or assignments.

CPAR is designed to promote and assist in the advancement of ideas and technology which will have a direct, positive impact on construction productivity and Corps mission accomplishment. CPAR is focused on four major areas: planning and design improvement, improved construction site productivity, advanced materials, and technology transfer innovation. However, any idea for improving construction productivity will be considered. Ideas that cannot define a direct and demonstrable link to the advancement of construction productivity will not be accepted into the CPAR Program. Areas of interest include, but are not limited to:

Planning and Design Improvement:

- Computer-Aided Planning and Engineering Tools
- Advanced Site Investigation Technology
- Knowledge-Based Cost Estimating Systems
- Computer-Aided Design Systems
- Total Integrated Design Systems
- Expert Systems/Artificial Intelligence
- Materials Selection Systems
- Advanced Technology Selection Systems

Improved Construction Site Productivity:

- Construction Management Methods
- Computer-Aided Construction Management Systems
- Automated Construction/Robotics
- Expert Systems
- Automated Inspection and Quality Control
- Materials Handling

- Advanced Excavating and Tunneling
- Cold Weather Construction
- Marine Construction

Advanced Materials:

- High-Performance Cementitious Materials
- Structural Polymers
- Advanced Ceramics
- Metal Matrix Composites
- Advanced Fabrication Systems
- Coatings
- Adhesives/Fasteners
- Geomodifiers/Geotextiles

Technology Transfer Innovation:

- User-Based Technology Transfer Processes
- Technical Support Services
- Skills Upgrading Methods
- Information Exchange Systems

Proposal Review Process

Proposals received by the Corps laboratories which meet CPAR criteria may be discussed and further developed, as necessary, by the laboratory and U.S. construction industry partner(s). The following criteria will be used to evaluate the proposals. The first two evaluation factors are of equal importance and are more significant than the remaining factors, which are listed in descending order of importance:

1. Potential Impact On U.S. Construction Industry Productivity

High—Technological advancement which would have major beneficial impact on current construction industry processes, materials and/or equipment and will have a demonstrable major beneficial impact on construction industry productivity and effectiveness.

Medium—Technological advancement which would improve on and/or demonstrate currently available processes, materials and/or equipment not in wide-spread construction industry use and which would have a demonstrable beneficial impact on construction industry productivity and effectiveness.

Low—Technological advancement which would upgrade construction industry processes, materials and/or equipment in current use and which would have a limited but beneficial impact on construction industry productivity and effectiveness.

2. Potential Impact On The Corps of Engineers

High—Technological advancement which would be a major improvement in technology and procedures currently used by the Corps and which would have a demonstrable major beneficial impact on the Corps.

Medium—Technological advancement which would significantly improve currently used Corps technology and procedures and which would result in demonstrable benefits for the Corps.

Low—Technological innovation which would upgrade current Corps standard technology and procedures and which would have a limited but beneficial impact on the Corps.

3. Technology Transfer

High—Plan/concepts stated for broad-scale use/adoption of the product by non-Federal and Federal organizations and the production/marketing/dissemination of the product by the non-Federal partner(s).

Medium—Plans/concepts stated for some beneficial use/adoption of the product by non-Federal and Federal organizations.

Low—Plans/concepts stated for limited but beneficial use/adoption of the product by non-Federal and Federal organizations.

4. Ease of Adoption

High—Technology provides construction industry productivity and effectiveness improvement with minimal equipment, training, materials and operating costs beyond the cost of current practice.

Medium—Technology provides construction industry productivity and effectiveness improvements, but requires moderate additional equipment, training, materials, and operating costs beyond the cost of current practice.

Low—Technology provides construction industry productivity and effectiveness improvement, but with substantially higher costs for additional equipment, training, materials, and operation beyond the cost of current practice.

After discussions between the Corps laboratory and the U.S. construction industry partner(s), a CPAR Executive Summary of the proposal will be prepared by the laboratory. The Executive Summary will contain all expected costs and cost-sharing arrangements, time needed to complete, specific end product(s), proposed technology transfer/marketing plan, and expected benefits for the U.S. construction industry and the Corps.

Corps laboratories will submit their recommended CPAR Executive Summaries to HQUSACE for consideration under the CPAR Program. The CPAR Executive Summaries will be reviewed and recommendations made by the CPAR Executive Committee in HQUSACE. The CPAR Executive Committee is composed of senior-level HQUSACE managers. The Director of Civil Works, HQUSACE, will act on the recommendations of the CPAR Executive Committee in approving the annual CPAR Program.

All information and data furnished by the potential U.S. construction industry partner(s) will be used for evaluation purposes only and will be safeguarded from unauthorized disclosure in accordance with applicable laws. Protection of information and data during and after completion of a CPAR project will be defined and agreed to in the CPAR-CRDA. Classified information and data will be handled in accordance with Army regulations.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Except where declared by law or approved by the head of an Agency, no award of Federal funds shall be made to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected Agency(ies) and the debtor. No award will be made to a debarred or suspended firm or organization.

Classification

This document is not a major rule requiring a regulatory analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is not a major Federal action requiring an environmental assessment under the National Environmental Policy Act. The CPAR Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Corps determined that Executive Order 12372 is not applicable to CPAR. This notice does not contain policies with Federalism implication sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. CPAR is being carried out under the authority of Section 7, Water Resources Development Act of 1988 (Pub. L. 100-676) (33 U.S.C. 2313).

Dated: January 28, 1991.

Dennis C. Cochrane

Colonel, General Staff; Executive, OASA (CW)

[FR Doc. 91–2582 Filed 2–4–91; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Meeting: Department of Defense Clothing and Textiles Board

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Postponement of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Deputy Director for Acquisition Management, Defense Logistics Agency, announces postponement of the following meeting of the Department of Defense Clothing and Textiles (DoD C&T) board.

DATES: February 7, 1991.

ADDRESSES AND TIME:

US Marine Corps Clothing Initial Issue Point, Parris Island, South Carolina, 0900–1130.

US Army Clothing Initial Issue Point, Fort Jackson, South Carolina, 1430–1700.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine James; Quality Assurance Specialist, Product Quality Management Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274–7141.

SUPPLEMENTARY INFORMATION: Due to Desert Storm, the meeting will be rescheduled at a later date.

CAPT M. J. Schildwachter, USN,

Executive Secretary, DoD C&T Board.

[FR Doc. 91–2574 Filed 2–4–91; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

National Assessment of Educational Progress (NAEP) Public Meeting

AGENCY: Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting to brief the public on the current plans for the 1994–96 NAEP assessments. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIMES: February 26, 1991, 9 a.m.–12 p.m.

PLACE: Room 3000, 400 Maryland Avenue, SW., Washington, DC.

ADDITIONAL INFORMATION: Individuals wishing to receive a copy of the issues to be discussed should contact Steve Gorman, room 308, 555 New Jersey Avenue, Washington, DC 20208, (202) 219–1761.

SUPPLEMENTARY INFORMATION: NAEP is a survey of the educational achievement of 9-, 13-, and 17-year-old American students, and changes in that achievement over time. NAEP has successfully collected information for over 20 years with the philosophy of providing accurate and useful information to educators and policy makers while placing as little data collection burden as possible on students. As the nation's primary indicator of what school children know and can do, NAEP's utility and credibility are based on its ability to change and keep pace with current interests in education. These efforts to be sensitive to changing school environments necessitate changes in the assessment. Because NAEP is the assessment instrument for a diverse nation imbued with the spirit and tradition of freely voicing opinions, it is quite appropriate that the process of developing, conducting, analyzing, and reporting NAEP is implemented with the guidance of and with input from an ongoing series of meetings and reviews. Inevitably, each discussion suggests useful revisions in some aspects of the system, and NAEP has been flexible enough to accommodate many of these changes and evolve from assessment to assessment.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–2640 Filed 2–4–91; 8:45 am]

BILLING CODE 4000–11–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Transmission Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and opportunities for review and comment. *BPA File No:* TR–91. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation TR–91.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. BPA is proposing to revise its transmission rate schedules, effective October 1, 1991, to produce sufficient revenue for BPA to meet its statutory requirements for Fiscal Year (FY) 1992 and FY 1993. BPA therefore is proposing to adjust its 1989 transmission rate schedules to be effective for FY 1992 and FY 1993.

Through its Programs in Perspective (PIP) process, BPA has completed a thorough review of program cost levels included in the budgets for FY 1992 and FY 1993. The Administrator will not reexamine program level decisions in the rate case. In the same public process, BPA's financial goals for FY 1992 and FY 1993 were reviewed. These goals also will not be reexamined in the rate case.

Beginning in October 1990, BPA conducted a series of workshops on subjects relevant to BPA's ratemaking. The purpose of the workshops was to identify, simplify, and reduce the number of issues that might become part of a 1991 rate case and to reduce the amount of discovery normally required during the formal rate proceedings. Opportunity was provided to understand BPA models, the assumptions used in the models, and the data inputs. All parties to the 1989 rate case were invited to the workshops. The workshops were well attended and provided opportunities for informal public comment on issues outside the formal hearing process.

BPA has categorically excluded the 1991 rate case from further environmental review. United States Department of Energy procedures implementing the National Environmental Policy Act provide for excluding from further environmental review rate increases that do not exceed the rate of inflation since the last rate increases. BPA last raised its power rates in 1987 and its transmission rates in 1983. The amount of the proposed increase in both the power and transmission rates is less than the rate of inflation since the last increase.

In addition, BPA has determined that any potential environmental effects are

too remote and speculative to be identified in any meaningful way and then analyzed as to their significance. Since the principal effect of a rate increase is economic and BPA cannot determine how its rate increases will be passed on to the region's ratepayers, BPA finds that excluding the 1991 rate case from further environmental analysis is appropriate.

Opportunities will be available for interested persons to review BPA's proposal to adjust the 1989 rates, to participate in the rate hearing, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this notice.

Responsible official: Mr. Sydney D. Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated in this notice. The petitions to intervene must be received by February 13, 1991, and should be addressed as follows: Honorable Dean F. Ratzman, Hearing Officer, c/o John Ciminello—APR, Hearing Clerk, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel—APR, P.O. Box 3621, Portland, Oregon 97208. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on February 19, 1991, in the Rates Hearing Room of the Federal Building East, 911 NE. 11th. Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. BPA will prefile studies and testimony at the prehearing conference. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting any necessary cross examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference. BPA may conduct one or more public field hearings. If BPA holds public field hearings written transcripts would be made and would become part of the Official Record. Dates of these hearings would be announced through mailings and public advertising.

The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

February 13, 1991.	Deadline for interventions to be filed with Hearing Clerk at above address.
February 19, 1991.	Initial studies and testimony available at BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.
February 19, 1991.	Prehearing Conference to set schedule and act on petitions to intervene.
March 18, 1991.	Parties to file Direct Case.
April 29–May 10, 1991.	Cross-Examination.
June 20, 1991....	Participants' written comments due.
June 27, 1991....	Draft Record of Decision.
August 2, 1991.	Final Record of Decision.

ADDRESSES: Written comments must be received by June 20, 1991, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Public Involvement Manager—ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, Washington 98801–0741, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C 19030, suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Richard J. Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, room 450, 304 N. 8th Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

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A. Transmission Rate Schedules.
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I. Introduction

On December 24, 1990, in order to satisfy contractual provisions between BPA and its customers, BPA published in the **Federal Register** a notice of "Intent to Revise Transmission Rates to Become Effective October 1, 1991," 55 FR 52872. Since then, BPA has continued to study the adequacy of its current rates and has concluded that current rates need to be adjusted for the FY 1992 and FY 1993 rate period.

In order to assess its current rates, BPA first determined the amount of revenue required to meet its financial obligations in FY 1992 and FY 1993. BPA has determined that the revenues BPA would expect to collect from projected loads under its current rates will not adequately cover these revenue requirements. Therefore, BPA proposes to establish revised 1991 transmission rates. BPA files its rates with the Federal Energy Regulatory Commission (FERC) for confirmation and approval.

The proposed transmission rates were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 (1982); the Flood Control Act of 1944, 16 U.S.C.

825s (1982); the Federal Columbia River Transmission System Act, 16 U.S.C. 838 (1982); and the Northwest Power Act, 16 U.S.C. 839 (1982).

The rate schedules contained in this publication were established in accordance with the Northwest Power Act, which was signed into law on December 5, 1980. The proposed rate schedules reflect many requirements contained principally in the Northwest Power Act's rate directives (section 7), and the conditions related to classes of customers and services contained in the Northwest Power Act's power sales directives (section 5).

BPA proposes that its transmission rate schedules and the General Transmission Rate Schedule Provisions (GTRSPs) associated with those schedules become effective upon interim approval or upon final confirmation and approval by FERC. BPA will request FERC approval effective October 1, 1991. Section I.A. of the GTRSPs specifies the proposed effective period for each rate.

The 1991 transmission rate schedules. and the GTRSPs associated with those rate schedules, supersede BPA's 1989 rate schedules (which became effective October 1, 1989) to the extent stated in the Availability section of each 1989 rate schedule. Two transmission rates are referenced in existing contracts. These are the TGT–1 and UFT–83 rate schedules. Those rates are effective through September 30, 1991. 39 FERC ¶ 60,078 (1987). BPA will request extension of TGT–1 and UFT–83 through September 30, 1993.

Many transmission agreements were negotiated prior to the Transmission System Act and reflect conditions and policies prevalent at the time of negotiation. Provisions that differ between agreements include the types of facilities available, type of service, frequency of rate adjustments, determination of losses, and calculation of billing determinants. Some agreements, for example, specify that transmission rates may be changed annually, while other agreements limit rate adjustments to once every 3 years.

Applicable legislation requires transmission system costs to be equitably allocated between Federal and non-Federal power utilizing the system. In cases where BPA is required by contractual provisions to use a specific rate design method, such methods are used in this rate proposal.

In developing the proposed transmission rates, BPA considered many factors, including revenue requirements, ease of administration, revenue stability, rate continuity, ease of comprehension, and BPA's statutory obligations. The studies that have been prepared to support the proposed transmission rates will be available for examination on February 19, 1991, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th, Portland, Oregon. The studies will be mailed to all parties to BPA's 1989 rate case and will be available at the Prehearing Conference. However, BPA will make as many of the studies as possible available on February 11, 1991. The studies are:

1. Revenue Requirement Study and Documentation.
2. Segmentation Study.
3. Loads and Resources Study and Documentation.
4. Section 7(b)(2) Rate Test Study and Documentation.
5. Wholesale Power Rate Development Study and Documentation.
6. Transmission Rate Design Study.

To request any of the studies by telephone, call BPA's document request line: 800–841–5867 for Oregon; 800–624–9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503–230–3478. Please request the study by its above title. Also state whether you require the accompanying documentation (this can be quite lengthy); otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Documentation.")

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be established according to certain procedures. These procedures include, among other things, issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's rule for general rate proceedings, § 1010.9 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986). These procedures implement, and in most instances expand, the statutory requirements. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as any person who may express views, but who does not successfully petition to intervene as a party. Participants written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by June 20, 1991. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement office.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of the "Procedures Governing Bonneville Power Administration Rate Hearings." 51 FR 7611 (March 5, 1986). Parties may participate in any aspect of the hearing process.

Persons wishing to become a formal "party" to BPA's rate proceeding must notify BPA in writing of their request. These petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformance with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Any opposition to a petition to intervene must be filed and served at least 24 hours before the February 19, 1991, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in BPA's Public Information Center, 1st Floor, 905 NE. 11th, Portland, Oregon. Interventions are subject to § 1010.4 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings.

The record will include, among other things, the transcripts of any hearings,

any written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be first expressed in the Administrator's Draft ROD. Parties will have an opportunity to comment on the Draft ROD as provided in BPA's hearing procedures. Participants may also request a copy of the Draft ROD and provide comments in writing. The Administrator will serve copies of the Administrator's ROD on all parties and will file the final proposed rates together with the record with FERC for confirmation and approval.

III. Major Studies and Issues

A. Major Studies

1. Revenue Requirement Study

The Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, and the Northwest Power Act require BPA to design rates that are projected to collect revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including the amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. The Revenue Requirement Study includes a determination of whether current rates will produce enough revenues to recover all BPA costs and expenses, including BPA's repayment obligation to the U.S. Treasury.

The Transmission System Act and the Northwest Power Act require that transmission rates be based on an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In compliance with a FERC order dated January 27, 1984, 26 FERC ¶ 61,096, the Revenue Requirement Study incorporates the results of separate repayment studies for the generation and transmission components of the FCRPS. The repayment studies for generation and transmission demonstrate the adequacy of the projected revenues to recover all of the Federal investment in the FCRPS over the allowable repayment period. The adequacy of projected revenues to recover test period revenue requirements and to meet repayment period recovery of the Federal investment are tested and demonstrated separately for the generation and transmission functions.

The Revenue Requirement Study for the 1991 initial rate proposal is based on revenues and cost estimates for FY 1992 and FY 1993. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1990. In addition, it reflects all FCRPS obligations incurred pursuant to the Northwest Power Act, including residential exchange costs.

2. Segmentation Study

BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) to provide transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Pacific Northwest-Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; fringe area; and delivery segments for public agency, direct service industrial (DSI), and investor-owned utility customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services they provide. This provides the basis for segmenting the projected transmission revenue requirements used in BPA s rate proposals. The results of the Study include the historical investment and the average of the last 3 years' operations and maintenance expenses. In addition, the facilities of the integrated network are similarly divided among distinct services.

This division of the FCRTS into segments provides for the equitable allocation of transmission costs between Federal and non-Federal customers using the system.

3. Loads and Resources Study

The Loads and Resources Study presents all the load and resource data necessary for developing BPA's wholesale power rates. This study incorporates results from load forecasts, resource analyses, power contracts, and BPA's Resource Program.

BPA develops forecasts of non-small-generating public utility (NSGPU) and generating public utility (GPU) loads. For the forecasted period prior to January 1994, econometric models are used to prepare these forecasts. The model for forecasting NSGPU loads uses employment data for Washington, Oregon, and Idaho as an input. The model for forecasting GPU loads uses employment data for the state of Washington and Lane County, Oregon, as inputs. For the period of January 1994 and beyond, sector-specific models are used to prepare the forecasts.

A DSI load forecast is prepared for aluminum DSI loads by analyzing smelter production costs and relative aluminum prices. A DSI load forecast for non-aluminum DSI loads is prepared by analyzing historical and technical plant information and forecasted market conditions.

BPA's resource acquisition plans are based on work by BPA and Northwest Power Planning Council staff and reflect extensive input and review by the general public and the region's utilities. The specific resource acquisitions and associated costs included in this proposal are based on BPA's 1990 Resource Program. Conservation savings are measured by considering several factors: economic and load growth; the savings from the technical conservation measure; and the assessment of the speed and degree of program implementation.

Planned resource acquisitions reflect the guidance given in the Northwest Power Planning Council's Power Plan. Besides emphasizing a diverse resource portfolio, including both conservation and generating resources, BPA is committed to moving toward a blend of acquisition methods including BPA-designed, utility-designed, and developer-initiated programs. Use of billing credits and competitive acquisitions is thus an important component of BPA's resource acquisition process. This combination of resource diversity and a variety of acquisition approaches allows BPA to better deal with varying circumstances and uncertainties.

The load/resource balance determines BPA's obligation during the test years and each corresponding 42-month critical period. It determines the supply of surplus firm power in the region and on the Federal system in each critical period. The hydroregulation (hydro) study incorporates system constraints such as the Water Budget for fish migration, the operation of thermal plants, exports and imports of power, and projected resource acquisitions. In this proposal, a 42-month (critical period) hydro study and a 50-year hydro study were completed. The time frame considered in the hydro study starts in

July 1991. The 50-year study determines nonfirm energy for the region.

4. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) customers) for their general requirements for the rate test period plus the ensuing 4 years are no higher than the costs of power to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) customers' wholesale firm power rates from certain costs resulting from provisions of the Northwest Power Act. The rate test can result in a reallocation of costs from the 7(b)(2) customers to other rate classes. The Section 7(b)(2) Rate Test Study describes the application and results of the section 7(b)(2) rate test implementation methodology.

The rate projections and the actual rate test itself are performed by using BPA's Supply Pricing Model (SPM). The SPM simulates BPA's rate development process, using load, resource, and cost data consistent with that used in this rate proposal. The assumptions and rate development processes such as load/resource balancing, cost allocation, and rate design are also consistent with this rate proposal. The SPM calculates two sets of wholesale power rates for BPA's preference customers: (1) A set of rates for the test period and the ensuing 4 years, assuming that section 7(b)(2) is not in effect (program case rates); and (2) a set for the same period considering the five assumptions listed in section 7(b)(2) (7(b)(2) case rates). Certain costs specified in section 7(g) of the Northwest Power Act (7(g) costs) are subtracted from the program case rates. The SPM then discounts each year's rates to the test year of the relevant rate case, averages each set of discounted rates, and compares the two resulting averages rounded to the nearest tenth of a mill. If the average of the discounted program case rates less the 7(g) costs, is larger than the average discounted 7(b)(2) case rates, the rate test triggers. If the rate test triggers, the amount of dollars to be reallocated in the test period (7(b)(2) amount) is calculated by multiplying the difference between the discounted program case and 7(b)(2) case rates by the general requirements loads of the preference customers. The 7(b)(2) amount is used as an adjustment to the allocated costs in the rate case test period.

5. Wholesale Power Rate Development Study (WPRDS)

The WPRDS consists of two sections. The first section performs the steps in the rate development process, which were performed prior to 1987 in the Cost of Service Analysis (COSA). The second section performs the steps in the rate development process, which were performed prior to 1987 in the Wholesale Power Rate Design Study.

a. *COSA section.* The COSA section of the WPRDS apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class and in accord with the rate directives of the Northwest Power Act. BPA's revenue requirement is functionalized to transmission and generation in the Revenue Requirement Study. Transmission costs are identified with segments of the transmission system in BPA's Segmentation Study. The results of these studies are used in the COSA to determine the costs of providing services to BPA's customers. The COSA further identifies costs of specific types of service by performing the following steps.

Classification. BPA classifies generation and transmission costs to the energy and capacity components of electric power.

Seasonal differentiation. BPA's costs of providing energy vary by season of the year. To reflect this variation, BPA assigns energy costs to a winter and summer period and designs rates based on this differential.

Allocation. The final major step in the COSA is to allocate the functionalized, segmented, classified, and seasonally differentiated costs to customer classes. Costs are allocated to classes of service on the basis of the relative use of services.

b. *Wholesale power rate design section.* The Wholesale Power Rate Design section uses the allocated costs developed in the COSA and modifies them: (1) To reflect BPA's rate design objectives; (2) to comport with contractual requirements; (3) to reflect the results of other BPA studies and commitments made in other public involvement processes under section 7(i) of the Northwest Power Act; and (4) to comport with requirements of applicable legislation, including the Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, and the Northwest Power Act. BPA's rate design objectives include recovery of the revenue requirement, rate and revenue stability, practicality, fairness, and efficiency.

Adjustments to the COSA results include the following:

Excess Revenue Adjustment. In the COSA, BPA allocates its entire test period revenue requirement to firm power loads on the basis of resources available under critical water conditions. However, rates are set assuming that average water conditions occur and BPA will make large amounts of nonfirm energy (NF) sales. Since no generation costs are allocated to NF service, forecasted NF revenues are credited to firm loads.

DSI First Quartile Service. The DSIs are not allocated generation costs in the COSA for service to their first quartile, since BPA does not plan firm resources to serve the first quartile. BPA serves DSI first quartile loads with a combination of nonfirm energy, surplus firm power, hydro system shifting techniques, and purchases. BPA assigns a cost to first quartile service based on an opportunity cost concept and credits other rates in the amount of the assigned first quartile cost.

Fixed contract revenue deficiencies. BPA sells power at contractually fixed terms to two classes of customers. The Columbia Storage Power Exchange (CSPE) agreements have fixed rates, and capacity/energy exchanges have fixed exchange ratios. In the COSA, BPA allocates costs to these customer classes. Because the contract rates and ratios cannot be adjusted, and because allocated costs exceed expected revenues, a revenue deficiency results. The revenue deficiency is allocated through an adjustment affecting other rate classes.

Surplus firm power revenue deficiency adjustment. BPA expects to sell its surplus firm power under long-term contracts and in the open market. Some of this surplus firm power will be sold at prices lower than the fully allocated cost, thereby causing a revenue deficiency. The difference between expected surplus firm power revenues and fully allocated costs is allocated to all other customers.

Equalization of demand adjustment. BPA has historically applied the same demand charges for sales to firm capacity customers as are applied to its priority firm power customers. In order to achieve a uniform demand charge, a rate design adjustment is required. The equalization of demand applies only to pre-985 contracts.

7(c)(2) Adjustment. The rates applicable to the DSIs are set at a level that is equitable in relation to BPA preference customers' industrial rates. The costs allocated to the DSIs are higher than revenues from the

"equitable rate." The difference is the 7(c)(2) delta, which is allocated to other customers.

DSI Floor Rate Adjustment. The DSI rate is subject to a floor specified in section 7(c)(2) of the Northwest Power Act. If the DSI rate is below the floor rate, the DSI rate is raised to the floor rate, and a rate design adjustment is necessary to credit additional revenues from the DSIs to other firm power customers.

7(b)(2) Adjustment. Section 7(b)(2) of the Northwest Power Act provides rate protection to BPA's preference customers from certain costs specified in the provisions of the Act. This adjustment will not be necessary in the FY 1992–FY 1993 rate period.

This list of adjustments is not intended to be all inclusive. All of the above adjustments are functionalized, classified, segmented, and seasonalized where appropriate. After all adjustments are made, the final rates are calculated.

Final rates calculated in the WPRDS are included in BPA's General Rate Schedules. These rate schedules are applied in conjunction with BPA's General Rate Schedule Provisions (GRSPs), which define the applicability of the rates to the type of service provided.

6. Transmission Rate Design Study

a. *Transmission system revenue requirement adjustment.* Prior to the design of transmission rates, the WPRDS-derived network wheeling (IR and FPT) revenue requirement must be adjusted to account for revenue in excess of allocated costs. Revenue received from the Energy Transmission (ET–91) and the Nonfirm Energy (NF–91) rates are credited against the allocated costs of wheeling service derived in the WPRDS. The credit from the NF–91 rate is functionalized between generation and transmission by considering the transmission portion of the rate as the average cost per kilowatt hour of transmitting energy for wholesale power services. The transmission credit is obtained by multiplying this average cost by the estimated nonfirm energy sales. It is then divided among the segments of the transmission system that carry nonfirm energy sales (excluding the three Interties) in proportion to their allocated costs. The anticipated revenue associated with the ET–91 rates is credited against Network costs.

b. *Proposed wheeling rate schedules*—(1) *Formula power transmission (FPT).* The FPT–91 rate schedule is available for the firm wheeling of power. The form of this rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula that is prescribed by contract provisions.

In designing the FPT–91 rate, the first step is to quantify costs for the specific types of transmission facilities treated in the rate components. Estimates of the use of these facilities are determined from a power flow of the projected peakload period for the test year. The power flow study assumes certain resource and load conditions that BPA believes are reasonable for normal hydro conditions. Unit costs for the FPT rate components are derived by dividing facility cost by power flow facility use.

(2) *Integration of resources (IR).* The IR–91 rate is a flexible transmission service designed to reflect BPA's postage-stamp (independent of distance) pricing policy. The IR service does not recognize specific contract paths, but rather provides access to all FCRTS facilities contained in the definitions of Main Grid and Secondary System.

The IR–91 rate is calculated by dividing the adjusted revenue requirement for the class into two equal parts to reflect a 50–50 classification of costs to capacity and energy. The quotient of these costs and the appropriate billing determinant (contract demand for capacity-related costs; total energy usage for energy) yields the rates.

As in the IR–89 rate, a short-distance discount formula is retained in the proposed IR–91 rate. Utilities have a choice of either the FPT rate schedule or the IR–91 rate schedule as the only rate to apply to all of their firm wheeling needs over Main Grid and Secondary System facilities of the FCRTS, except as otherwise agreed by BPA. Utilities currently purchasing FPT may choose the rate schedule which yields the lower total charge for transmission service.

(3) *Incidental energy transmission (ET), intertie transmission (IN, IE, IS), and market transmission (MT).* For this rate filing, rate schedules are again offered on the Northern and Southern Interties that apply to all wheeled power on these segments, whatever the characteristics of the power. The IE rate schedule applies only to nonfirm energy wheeled on the Eastern Intertie. The ET rate will be limited to intra-regional FCRTS facilities excluding the Interties.

The schedule for the Energy Transmission (ET–91) class of service is not allocated costs in the WPRDS. Accordingly, it is necessary to determine the level of the rate by other means. The ET–91 rate is designed to approximate the average cost of firm wheeling on the network. It is calculated by dividing the costs allocated to FPT/IR (minus appropriate NF revenues) by all wheeling under firm wheeling contracts.

The proposed IS–91 rate consists of two parts: (1) A mills per kilowatthour rate applicable to nonfirm use or hourly reservation of intertie capacity; and (2) a dollar per kW average cost-based rate for firm use, assured delivery.

The Northern Intertie (IN–91) rate schedule is calculated by dividing segment costs by projected wheeling energy.

The Eastern Intertie (IE–91) rate approximates the average cost of Townsend-Garrison Transmission (TGT–1). It is calculated as the ratio of TGT–1 payments from participants owning Colstrip to the projected overall wheeling of Colstrip.

BPA is continuing its Market Transmission (MT–91) rate. This rate schedule was developed for use among Hestern Systems Power Pool (WSPP) participants and has a flexible service charge with a ceiling, initially of 10.5 mills/kWh, and a floor of 1 mill per kilowatthour.

B. Other Issues

1. Risk Analysis

BPA's projected revenues are subject to significant variations due to changes in aluminum prices, fuel prices, streamflows, nuclear plant performance, economic conditions, and weather conditions. To evaluate the impact of these risk factors, BPA performed a Risk Analysis for this proposal. The objective of the Risk Analysis is to evaluate the impact of various risk factors on BPA's ability to make annual U.S. Treasury payments, cover expenses, and achieve BPA's financial goal of increasing financial flexibility in order to decrease reliance on debt financing. The risk analysis demonstrates that the planned net revenues included in this proposal are sufficient to meet BPA's financial objectives for FY 1992 and FY 1993.

2. Implementation of BPA's Interim Long-Term Financial Policy

While BPA's financial goals are not a topic for the rate case. BPA will propose a method by which the financial goals are to be included in the determination of revenue requirements. This proposed method may be an issue in the rate case. Such issues include the method of functionalizing the net revenues and the interest credit on cash reserves between the generation and transmission functions.

3. Allocation of New Resource Costs

BPA has moved from a period of power surplus to a period of load/resource balance. This situation requires BPA to acquire resources to serve its firm load obligations. The FY 1992 and FY 1993 rate period includes costs to acquire new resources. An issue may be how BPA proposes to allocate the costs of these new resources.

4. Treatment of New Contracts

New contracts have been executed for long-term sales of capacity and for capacity/energy exchanges. Given that these new contracts are governed by provisions of the Northwest Power Act, BPA will propose a treatment for the costs, revenues, and energy exchange resources associated with these contracts. This treatment may be an issue in the rate case.

5. Scope of Hearing

Beginning in July 1990, BPA began consideration of a long-term financial policy during its PIP process. As noted in the materials and the notices provided to BPA customers, the purpose of considering long-term financial goals and alternative debt management strategies was to address the problem of BPA's financial vulnerability resulting from revenue uncertainties in any particular year. The financial goals were the subject of initial discussions with BPA customers throughout the summer and the fall of 1990. Additional discussions with individual utility managers took place in August and were followed by public meetings in September. At the end of these discussions BPA provided a formal proposal for review and comment. Additional public meetings were held, followed by a formal transcribed session on October 10, 1990, where oral comments were submitted. Formal written comments were submitted at the end of October.

The interim long-term financial policy is designed to decrease total fixed costs and thereby provide long-term programmatic, rate and financial stability, and other benefits. In determining to adopt this interim policy, BPA carefully considered all comments submitted during the extended comment period. The final decision to implement the interim long-term policy in the 1992–1993 rate period is set forth in the Administrator's PIP close-out letter of November 13, 1990. This final decision was followed by a detailed evaluation document entitled "Evaluation of Financial Policy Issues" (November 27, 1990), which considered the various points raised during the comment process on BPA's proposed financial policy. These two documents are incorporated herein by reference for informational purposes.

In its November 27, 1990, evaluation document BPA recognized that there were unresolved issues concerning the continued pace of debt reduction, adequate financial reserve levels, and other related issues. BPA noted that these issues would be addressed as part of the development of a 10-year financial plan, which would also serve as a new look at the interim long-term financial policy. BPA will involve its customers in the development of this 10-year financial plan, which it expects to begin in the summer of 1991. In addition, the Administrator adopted the following three financial objectives to implement the policy in the FY 1992 and FY 1993 rate period:

1. At least a 95 percent probability of making payments to the Treasury in full and on time.

2. At least an 80 percent confidence each year of meeting annual costs out of annual revenues.

3. A 50 percent chance of producing an average of $120 million in net revenues each year as a step toward debt management.

As noted in the Administrator's November 13, 1990, letter, the decision to adopt the interim long-term financial policy and the three objectives in the FY 1992 and FY 1993 rate period is a final decision, which will not be revisited in the 1991 rate case. Accordingly, pursuant to rule 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude any material or arguments submitted in the hearing which seek to revisit the appropriateness of implementing the interim long-term financial policy and associated objectives in the 1991 rate period, the wisdom or legitimacy of their substance, or which relate to the legality of this final action. Arguments concerning BPA's long-term financial policy have been addressed, will be addressed again in other forums, and will not be considered here. Similarly, BPA's program level decisions will not be revisited in this rate case.

IV. Transmission Rate Schedules and General Transmission Rate Schedule Provisions

A. Transmission Rate Schedules—Schedule FPT–91.1, Formula Power Transmission

Section 1. Availability.

This schedule supersedes schedule FPT–89.1 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once a year. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm availability of service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

A. Full-year Service

The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the Agreement.

1. Main grid charge

The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0324 per mile;

b. Main Grid Interconnection Terminal Factor: $0.37;

c. Main Grid Terminal Factor: $0.37;

d. Main Grid Miscellaneous Facilities Factor: $1.70;

2. Secondary system charge

The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.2960 per mile;

b. Secondary System Transformation Factor: $3.35;

c. Secondary System Intermediate Terminal Factor: $1.02;

d. Secondary System Interconnection Terminal Factor: $0.55;

B. Partial-year service

The monthly charge per kilowatt of billing demand shall be as specified in section II.A for all months of the year except for agreements with terms 5 years or less and which specify service for fewer than 12 months per year. The monthly charge shall be:

1. during months for which service is specified, the monthly charge defined in section II.A. and

2. during other months, the monthly charge defined in section 11.A multiplied by $0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement. the billing demand shall be the largest of: A. the Transmission Demand; B. the highest hourly Scheduled Demand for the month; or C. the Ratchet Demand.

Schedule FPT–91.3—Formula Power Transmission

Section 1. Availability

This schedule supersedes schedule FPT–89.3 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once every 3 years. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm availability of service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's General Rate Schedule Provisions.

Section II. Rate

A. Full-Year Service

The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge. as applicable and as specified in the Agreement.

1. Main Grid Charge

The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0324 per mile;

b. Main Grid Interconnection Terminal Factor: $0.37;

c. Main Grid Terminal Factor: $0.37;

d. Main Grid Miscellaneous Facilities Factor: $1.70;

2. Secondary System charge.

The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:.

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.2960 per mile;

b. Secondary System Transformation Factor: $3.35;

c. Secondary System Intermediate Terminal Factor: $1.02;

d. Secondary System Interconnection Terminal Factor: $0.55;

B. Partial-Year Service.

The monthly charge per kilowatt of billing demand shall be as specified in Section 11.A for all months of the year except for agreements with terms 5 years or less and which specify service for fewer than 12 months per year. The charge shall be: 1. during months for which service is specified. the monthly charge defined in Section II.A, and 2. during other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of: A. the Transmission Demand; B. the highest hourly Scheduled Demand for the month; or C. the Ratchet Demand.

Schedule IR–91—Integration of Resources

Section I. Availability

This schedule supersedes IR–89 and is available for firm transmission service for electric power and energy using the Main Grid and/or Secondary System of the FCRTS. The definitions of Main Grid and Secondary Systems are the same as for the FPT–91.1 and FPT–91.3 rate schedules and are contained in the General Transmission Rate Schedule Provisions. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

The monthly charge shall be the sum of A and B where:

A. *The Demand Charge shall be* 1. $0.385 per kilowatt of billing demand; or 2. for Points of Integration (POI) specified in the Agreement as being short distance POI's, for which Main Grid and Secondary System facilities are used for a distance of less than 75 circuit miles, the following formula applies:

(0.2 + (0.8/75 x transmission distance)) ($0.385 per kilowatt of billing demand)

Where: the billing demand for a short distance POI is the demand level specified in the Agreement for such POI. and the transmission distance is the circuit miles between the POI for a generating resource of the customer and a designated Point of Delivery serving load of the customer. Short distance POI's are determined by BPA after considering factors in addition to transmission distance.

B. *The Energy Charge shall be* 1.02 mills/kWh of billing energy.

Section III. Billing Factors

To the extent that the Agreement provides for the customer to be billed for transmission in excess of the Transmission Demand or Total Transmission Demand, as defined in the Agreement, at the nonfirm transmission rate (currently ET–91), such transmission service shall not contribute to either the Billing Demand or the Billing Energy for the IR rate provided that the customer requests such treatment and BPA approves in accordance with the prescribed provisions in the Agreement.

A. Billinq Demand

The billing demand shall be the largest of: 1. the Transmission Demand. except under General Transmission Agreements where a Total Transmission Demand is defined; 2. the highest hourly Scheduled Demand for the month; or 3. the Ratchet Demand.

B. *Billinq Energy*

The billing energy shall be the monthly sum of scheduled kilowatthours.

Schedule IS–91—Southern Intertie Transmission

Section I. Availability

This schedule supersedes IS–89 and is available for all transmission on the Southern Intertie. Service under this schedule is subject to, BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

A. Nonfirm Rate :

The charge for nonfirm transmission of non-BPA power shall be 3.0 mills/kWh of billing energy. This charge applies for both north-to-south and south-to-north transactions.

B. Firm Power Transmission Rate

The charge for firm transmission service granted access by BPA shall be $0.577 per kW per month of billing demand and 1.49 mills/kWh of billing energy. Firm transmission will only be made available to customers under this rate schedule who have executed a contract with BPA specifying use of the Firm Power Transmission rate for either north-to-south or south-to-north transactions.

Section III. Billing Factors

A. For services under section II.A. the billing energy shall be the monthly sum of the scheduled kilowatthours, plus the monthly sum of kilowatthours allocated but not scheduled. The amount of allocated but not scheduled energy that is subject to billing may be reduced pro rata by BPA due to forced Intertie outages and other uncontrollable forces that may reduce Intertie capacity. The amount of allocated but not scheduled

energy that is subject to billing also may be reduced upon mutual agreement between BPA and the customer.

B. For services under section II.B, the billing demand shall be the Transmission Demand as defined in the Agreement. The billing energy shall be the monthly sum of scheduled kilowatthours, unless otherwise specified in the Agreement.

Schedule IN–91—Northern Intertie Transmission

Section I. Availability

This schedule supersedes IN–89 and is available for all transmission on the Northern Intertie. Service under this schedule is subject to BPA s General Transmission Rate Schedule Provisions.

Section II. Rate

The charge for transmission of non-BPA power on the Northern Intertie shall be 0.84 mills/kWh.

Section III. Billing Factors

Billing Energy

The billing energy shall be the monthly sum of the scheduled kilowatthours.

Schedule IE–91—Eastern Intertie Transmission

Section I. Availability

This schedule supersedes IE–89 and is available for all nonfirm transmission on the Eastern Intertie. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

The charge for transmission of nonfirm energy on the Eastern Intertie shall be 1.93 mills/kWh.

Section III. Billing Factors

Billing Energy

The billing energy shall be the monthly sum of the scheduled kilowatthours.

Schedule ET–91—Energy Transmission

Section I. Availability

This schedule supersedes ET–89, unless otherwise specified in the Agreement, with respect to delivery using FCRTS facilities other than the Southern Intertie, Eastern Intertie, or the Northern Intertie. and is available for firm (of not more than 1 year duration) or nonfirm transmission between points within the Pacific Northwest. BPA may interrupt nonfirm service which is provided under this rate schedule. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions (GTRSPs).

Section II. Rate

The charge for transmission of non-Federal electric energy shall be 2.09 mills/kWh.

Section III. Billing Factors

Billing Energy

The billing energy shall be the monthly sum of scheduled kilowatthours.

Schedule MT–91—Market Transmission

Section I. Availability

This schedule supersedes MT–89 and is available for Transmission Service for transactions using FCRTS facilities pursuant to the Western Systems Power Pool (WSPP) Agreement. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The charge shall be determined in advance by BPA. The charge shall not exceed 33 percent of the difference between the average of the highest Incremental Cost of generation of the WSPP and the average of the lowest Decremental Cost of generation of the WSPP as determined by the WSPP Operating Committee during the year prior to the effective date of the WSPP Agreement. The initial maximum rate hereunder is 10.5 mills per kilowatthour. The Operating Committee may determine that a subsequent redetermination is necessary based upon the immediately preceding year's experience. However, the transmission charge shall not be less than 1 mill per kilowatthour.

Section III. Billing Factors

The billing factors shall be specified in advance by BPA, as to representing the Transmission Service use or reservation.

Schedule UFT–83—Use-of-Facilities Transmission

Section I. Availability

This schedule supersedes UFT–1 and UFT–2 unless otherwise provided in the Agreement, and is available for firm transmission over specified FCRTS facilities.

Section II. Rate

The monthly charge per kilowatt of Transmission Demand specified in the Agreement shall be one-twelfth of the annual cost of capacity of the specified facilities divided by the sum of Transmission Demands (in kilowatts) using such facilities. Such annual cost shall be determined in accordance with Section III.

Section III. Determination of Transmission Rate

A. From time to time, but not more often than once in each Contract Year, BPA shall determine the following data for the facilities which have been constructed or otherwise acquired by BPA and which are used to transmit electric power and energy:

1. The annual cost of the specified FCRTS facilities, as determined from the capital cost of such facilities and annual cost ratios developed from the FCRTS financial statement, including interest and amortization, operation and maintenance, administrative and general, and general plant costs.

2. The yearly noncoincident peak demands of all users of such facilities or other reasonable measurement of the facilities' peak use.

B. The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the annual cost of the FCRTS facilities used divided by the sum of Transmission Demands. The annual cost per kilowatt of Transmission Demand for a facility constructed or otherwise acquired by BPA shall be determined in accordance with the following formula:

$$\frac{A}{D}$$

Where:

A = The annual cost of such facility as determined in accordance with A.1. above.

D = The sum of the yearly noncoincident demands on the facility as determined in accordance with A.2. above.

The annual cost per kilowatt of facilities listed in the Agreement which are owned by another entity, and used by BPA for making deliveries to the transferee, shall he determined from the costs specified in the Agreement between BPA and such other entity.

Section IV. Determination of Billing Demand

Unless otherwise stated in the Agreement, the factor to be used in determining the kilowatts of billing demand shall be the largest of:

A. The Transmission Demand in kilowatts specified in the Agreement;

B. The highest hourly Measured or Scheduled Demand for the month, the Measured Demand being adjusted for power factor; or

C. The Ratchet Demand.

Schedule TGT–1—Townsend-Garrison Transmission

Section I. Availability

This schedule shall apply to all agreements which provide for the firm transmission of electric power and energy over transmission facilities of BPA's section of the Montana [Eastern] Intertie.

Section II. Rate

The monthly charge shall be one-twelfth of the sum of the annual charges listed below, as applicable and as specified in the agreements for firm transmission. The Townsend-Garrison 500-kV lines and associated terminal, line compensation, and communication facilities are a separately identified portion of the Federal Transmission System. Annual revenues plus credits for government use should equal annual costs of the facilities, but in any given year there may be either a surplus or a deficit. Such surpluses or deficits for any year shall be accounted for in the computation of annual costs for succeeding years. Revenue requirements for firm transmission use will be decreased by any revenues received from nonfirm use and credits for all government use. The general methodology for determining the firm rate is to divide the revenue requirement by the total firm capacity requirements. Therefore, the higher the total capacity requirements, the lower will be the unit rate.

If the government provides firm transmission service in its section of the Montana [Eastern] Intertie in exchange for firm transmission service in a customer's section of the Montana Intertie, the payment by the government for such transmission services provided by such customer will be made in the form of a credit in the calculation of the Intertie Charge for such customer. During an estimated 1- to 3-year period following the commercial operation of the third generating unit at the Colstrip Thermal Generating Plant at Colstrip, Montana, the capability of the Federal Transmission System west of Garrison Substation may be different from the long-term situation. It may not be possible to complete the extension of the 500-kV portion of the Federal Transmission System to Garrison by such commercial operation date. In such event, the 500/230 kV transformer will be an essential extension of the Townsend-Garrison Intertie facilities, and the annual costs of such transformer will be included in the calculation of the Intertie Charge.

However, starting 1 month after extension to Garrison of the 500-kV portion of the Federal Transmission System, the annual costs of such transformer will no longer be included in the calculation of the Intertie Charge.

A. Nonfirm Transmission Charge:

This charge will be filed as a separate rate schedule and revenues received thereunder will reduce the amount of revenue to be collected under the Intertie Charge below.

B. Intertie Charge for Firm Transmission Service:

Interie Charge =

$$\left(\text{TAC}/12\text{–NFR} \times \frac{\text{(CR–EC)}}{\text{TCR}} \right)$$

Section III. Definitions

A. TAC=Total Annual Costs of facilities associated with the Townsend-Garrison 500-kV Transmission line including terminals, and prior to extension of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer at Garrison. Such annual costs are the total of (1) interest and amortization of associated Federal investment and the appropriate allocation of general plant costs; (2) operation and maintenance costs; (3) allowance for BPA's general administrative costs which are appropriately allocable to such facilities, and (4) payments made pursuant to section 7(m) of Public Law 96–501 with respect to these facilities. Total Annual Costs shall be adjusted to reflect reductions to unpaid total costs as a result of any amounts received under agreements for firm transmission service over the Montana Intertie, by the government on account of any reduction in Transmission Demand, termination or partial termination of any such agreement or otherwise to compensate BPA for the unamortized investment, annual cost, removal, salvage, or other cost related to such facilities.

B. NFR=Nonfirm Revenues, which are equal to (1) the product of the Nonfirm Transmission Charge described in 11(A) above, and the total nonfirm energy transmitted over the Townsend-Garrison line segment under such charge for such month; plus (2) the product of the Nonfirm Transmission Charge and the total nonfirm energy transmitted in either direction by the Government over the Townsend-Garrison line segment for such month.

C. CR=Capacity Requirement of a customer on the Townsend-Garrison 500-kV transmission facilities as specified in its firm transmission agreement.

D. TCR=Total Capacity Requirement on the Townsend-Garrison 500-kV transmission facilities as calculated by adding (1) the sum of all Capacity Requirements (CR) specified in transmission agreements described in section 1; and (2) the Government's firm capacity requirement. The Government's firm capacity requirement shall be no less than the total of the amounts, if any, specified in firm transmission agreements for use of the Montana Intertie.

E. EC=Exchange Credit for each customer which is the product of (1) the ratio of investment in the Townsend-Broadview 500-kV transmission line to the investment in the Townsend-Garrison 500-kV transmission line; and (2) the capacity which the Government obtains in the Townsend-Broadview 500-kV transmission line through exchange with such customer. If no exchange is in effect with a customer, the value of EC for such customer shall be zero.

B. General Transmission Rate Schedule Provisions

Section 1. Adoption of Revised Transmission Rate Schedules and General Transmission Rate Schedule Provisions

A. Approval of rates

These rate schedules and General Transmission Rate Schedule Provisions (GTRSP) shall become effective upon interim approval or upon confirmation and approval by FERC. BPA will request FERC approval effective October 1, 1991. BPA is requesting that all proposed Transmission Rate Schedules be effective for a period of 2 years, from October 1, 1991 through September 30, 1993.

B. General provisions

These 1991 Transmission Rate Schedules and associated GTRSPs are virtually identical to and supersede BPA's 1991 Transmission Rate Schedules and GTRSPs (which became effective October 1, 1989) but do not supersede prior rate schedules required by agreement to remain in force.

Transmission service provided shall be subject to the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions

which are attached to the Agreement or as in any of the above Acts.

C. Interpretation

If a provision in the executed Agreement is in conflict with a provision contained herein, the former shall prevail.

Section II. Billing Factor Definitions and Billing Adjustments

A. Billing Factors

1. Scheduled demand

The largest of hourly amounts wheeled which are scheduled by the customer during the time period specified in the rate schedules.

2. Metered demand

The Metered Demand in kilowatts shall be the largest of the 60-minute clock-hour integrated demands measured by meters installed at each POD during each time period specified in the applicable rate schedule. Such measurements shall be made as specified in the Agreement. BPA, in determining the Metered Demand. will exclude any abnormal readings due to or resulting from (a) emergencies or breakdowns on, or maintenance of, the FCRTS; or (b) emergencies on the customer's facilities, provided that such facilities have been adequately maintained and prudently operated as determined by BPA. If more than one class of power is delivered to any POD. the portion of the metered quantities assigned to any class of power shall be as agreed to by the parties. The amount so assigned shall constitute the Metered Demand for such class of power.

3. Transmission demand

The demand as defined in the Agreement.

4. Total Transmission Demand

The sum of the transmission demands as defined in the Agreement.

5. Ratchet Demand

The maximum demand established during the previous 11 billing months. Exception: If a Transmission Demand or Total Transmission Demand has been decreased pursuant to the terms of the Agreement during the previous 11 billing months, such decrease will be reflected in determining the Ratchet Demand.

B. Billing Adjustments

Average power factor. The adjustment for average power factor. when specified in a transmission rate schedule or in the Agreement, shall be made in accordance with the average power factor section of the General Wheeling Provisions.

To maintain acceptable operating conditions on the Federal system, BPA may restrict deliveries of power at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 85 percent.

Section III. Other Definitions

Definitions of the terms below shall be applied to these provisions and the Transmission Rate Schedules, unless otherwise defined in the Agreement.

A. Agreement

An agreement between BPA and a customer to which these rate schedules and provisions may be applied.

B. Decremental Cost

As used in the MT rate schedule. Decremental Cost is as defined in the WSPP Agreement.

Eastern Intertie

The segment of the FCRTS for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment including related terminals at Garrison.

D. Electric Power

Electric peaking capacity (kW) and/or electric energy (kWh).

E. FCRTS

The transmission facilities of the Federal Columbia River Power System, which include all transmission facilities owned by the government and operated by BPA, and other facilities over which BPA has obtained transmission rights.

F. Firm Transmission Service

Transmission service which BPA provides for any non-BPA power except for transmission service which is scheduled as nonfirm. If the firm service is provided pursuant to the Agreement, the terms of the Agreement may further define the service.

G. Integrated Network

The segment of the FCRTS for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest. excluding facilities not segmented to the network in the Wholesale Power Rate Development Study used in BPA's rate development.

H. Main Grid

As used in the FPT and IR rate schedules, that portion of the Integrated Network with facilities rated 230 kV and higher.

I. Main Grid Distance

As used in the FPT rate schedules, the distance in airline miles on the Main Grid between the POI and the POD, multiplied by 1.15.

J. Main Grid Interconnection Terminal

As used in the FPT rate schedules, Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

K. Main Grid Miscellaneous Facilities

As used in the FPT rate schedules, switching, transformation, and other facilities of the Main Grid not included in other components.

L. Main Grid Terminal

As used in the FPT rate schedules, the Main Grid terminal facilities located at the sending and/or receiving end of a line exclusive of the Interconnection terminals.

M. Nonfirm Transmission Service

Interruptible transmission service which BPA may provide for non-BPA power.

N. Northern Intertie

The segment of the FCRTS for which the transmission facilities consist of two 500 kV lines between Custer Substation and the United States-Canadian border, one 500 kV line between Custer and Monroe Substations, and two 230 kV lines from Boundary Substation to the United States-Canadian border. and the associated substation facilities.

O. Point of Integration (POI)

Connection points between the FCRTS and non-BPA facilities where non-Federal power is made available to BPA for wheeling.

P. Point of Delivery (POD)

Connection points between the FCRTS and non-BPA facilities where non-Federal power is delivered to a customer by BPA.

Q. Secondary System

As used in the FPT and IR rate schedules, that portion of the Integrated Network facilities with operating voltage of 115 kVl or 69 kV.

R. Secondary System Distance

As used in the FPT rate schedules, the number of circuit miles of Secondary System transmission lines between the secondary POI and the Main Grid or the secondary POD, or the Main Grid and the secondary POD.

S. Secondary System Interconnection Terminal

As used in the FPT rate schedules, the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA facilities.

T. Secondary System Intermediate Terminal

As used in the FPT rate schedules, the first and final terminal facilities in the Secondary System transmission path exclusive of the Secondary System Interconnection terminals.

U. Secondary Transformation

As used in the FPT rate schedules, transformation from Main Grid to Secondary System facilities.

V. Southern Intertie

The segment of the FCRTS for which the major transmission facilities consist of two 500 kV AC lines from John Day Substation to the Oregon-California border, a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation, and one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

W. Transmission Service

As used in the MT rate schedule. Transmission Service is as defined in the WSPP Agreement.

Section IV. Billing Information

A. Payment of Bills

Bills for transmission service shall be rendered monthly by BPA. Failure to receive a bill shall not release the customer from liability for payment. Bills for amounts due of $50,000 or more must be paid by direct wire transfer; customers who expect that their average monthly bill will not exceed $50,000 and who expect special difficulties in meeting this requirement may request, and BPA may approve, an exemption from this requirement. Bills for amounts due BPA under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228-6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

1. Computation of bills. The transmission billing determinant is the electric power quantified by the method specified in the Agreement or Transmission Rate Schedule. Scheduled power or metered power will be used.

The transmission customer shall provide necessary information to BPA for any computation required to determine the proper charges for use of the FCRTS, and shall cooperate with BPA in the exchange of additional information which may be reasonably useful for respective operations.

Demand and energy billings for transmission service under each applicable rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amounts from 50 cents through 99 cents to the next higher dollar.

2. Estimated bills. At its option, BPA may elect to render an estimated bill to be followed at a subsequent billing date by a final bill. The estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. Billing Month. For charges based on scheduled quantities, the billing month is the calendar month. For charges based on metered quantities, the billing month is defined as the interval between scheduled meter-reading dates. The billing month will not exceed 31 days in any case. While it may be necessary to read meters on a day other than the scheduled meter-reading date, for determination of billing demand, the billing month will cease at 2400 hours on the last scheduled meter-reading date. Schedules will be predetermined. The customer must give 30 days notice to request a change to the schedule.

4. Due Date. Bills shall be due by close of business on the 20th day after the date of the bill (due date). Should the 20th day be a Saturday, Sunday, or holiday (as celebrated by the customer), the due date shall be the next following business day.

5. Late Payment. Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge of $25. In addition, an interest charge of one-twentieth percent (0.05 percent) shall be applied each day to the sum of the unpaid amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date and after giving 30 days' advance notice in writing, BPA may cancel the contract for service to the customer. However, such cancellation shall not affect the customer's liability for any charges accrued prior thereto under such agreement.

6. Disputed billings. In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the customer is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

BPA retains the right to verify, in a manner satisfactory to the Administrator, all data submitted to BPA for use in the calculation of BPA's rates and corresponding rate adjustments. BPA also retains the right to deny eligibility for any BPA rate or corresponding rate adjustment until all submitted data have been accepted by BPA as complete, accurate, and appropriate for the rate or adjustment under consideration.

7. Revised bills. As necessary, BPA may render a revised bill.

a. If the amount of the revised bill is less than or equal to the amount of the original bill, the revised bill shall replace all previous bills issued by BPA that pertain to the specified customer for the specified billing period and the revised bill shall have the same date as the replaced bill.

b. If a revision causes an additional amount to be due BPA or the specified customer beyond the amount of the original bill, a revised bill will be issued for the difference and the date of the revised bill shall be its date of issue.

Issued in Portland, Oregon, on January 25, 1991.

Steven G. Hickok,

Acting Administrator.

[FR Doc. 91-2680 Filed 2-4-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CS78-361-001, et al.]

Churchill Technology Inc., et al.; Applications for Small Producer Certificates [1]

January 28, 1991.

Take notice that each of the Applicants listed herein has filed an

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 19, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS78-361-001	12-18-90 [1] [2]	Churchill Technology Inc., 777 S. Wadsworth Boulevard, Irongate 4, Suite 130, Lakewood, CO 80226.
CS91-2-000	12-5-90	Pitson Corporation, 5373 West Alabama, Suite 510, Houston, TX 77056.
CS91-3-000	1-24-91	Zevex Corporation, 510 Hearn Street, Suite 300, Austin, TX 78703.

[1] By letter dated January 9, 1990, Applicant requests that the small producer certificate issued to XO Exploration Inc., in Docket No. CS78-361 be redesignated under the name Churchill Technology Inc.

[2] While the initial application was received on an earlier date, pursuant to § 381.103(b)(2)(iii) of the Commission's regulations, the filing date is the date on which the Commission receives the appropriate fee.

[Docket Nos. TA91-1-59-002 and TQ91-3-59-004]

Northern Natural Gas Co., Proposed Changes in FERC Gas Tariff

January 29, 1991.

Take notice that on January 25, 1991, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets:

Third Revised Volume No. 1

Substitute First Revised Eighty-Seventh Revised Sheet No. 4B
Substitute First Revised Fifty-Fifth Revised Sheet No. 4B.1
Second Substitute Eighty-Ninth Revised Sheet No. 4B
Second Substitute Fifty-Seventh Revised Sheet No. 4B.1
Substitute Ninetieth Revised Sheet No. 4B
Substitute Fifty-Eighth Revised Sheet No. 4B.1
Substitute First 10th Revised Sheet No. 4H

Original Volume No. 2

Second Substitute First Revised Ninety-Fourth Sheet No. 1C
Second Substitute Ninety-Sixth Revised Sheet No. 1C
Substitute Ninety-Seventh Revised Sheet No. 1C

Northern states that such tariff sheets are being submitted in compliance with the Commission's Letter Order dated December 26, 1990. In this proceeding, effective dates of December 1, 1990 and January 1, 1991 have been requested for this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before February 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2585 Filed 2-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-40-001]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

January 29, 1991.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on January 25, 1991, tendered for filing an amendment to its November 30, 1990 filing proposing changes to its FERC Gas Tariff. Northern has requested that the proposed filing become effective April 1, 1991, instead of February 1, 1991 as proposed in its November 30, 1990 filing. Northern proposes no other changes to that filing.

Northern states that it seeks to postpone the effective date of its filing in order to allow the parties to bring their ongoing settlement discussions in this docket to an orderly conclusion.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before February 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2586 Filed 2-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-044]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 29, 1991.

Take notice that on January 25, 1991, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets:

Third Revised Voume No. 1

Second Substitute Eighty-Eighth Revised Sheet No. 4B

Second Substitute Fifty-Sixth Revised Sheet No. 4B.1
Substitute Fifth Revised Sheet No. 4G.3
Substitute Ninth Revised Sheet No. 4H
Substitute Original Sheet No. 74L
Substitute Original Sheet No. 74M

Original Volume No. 2

Third Substitute Ninety-Fifth Revised Sheet No. 1C
Substitute Original 1X
Substitute Original 1Y

Northern states that such tariff sheets are being submitted in compliance with the Commission's Letter Order dated December 26, 1990, in this proceeding. Effective dates of December 1, 1990 and January 1, 1991 have been requested for this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before February 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–2587 Filed 2–4–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Conservation and Renewable Energy

[Case No. F–020]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to DMO Industries

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–020) granting DMO Industries (DMO) a waiver for its model WSC(-) condensing gas furnaces from existing Department of Energy (DOE) test procedures regarding blower time delay for determining the model's energy efficiency.

FOR FURTHER INFORMATION CONTACT:
Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, DMO has been granted a waiver for its model WCS (-) condensing gas furnaces, permitting the company to use an alternate test method in determining the Annual Fuel Utilization Efficiency (AFUE).

Issued in Washington, DC, January 31, 1991.

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order, Department of Energy, Office of Conservation and Renewable Energy

In the matter of: DMO Industries (Case No. F–020)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be describe for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

DMO filed a "Petition for Waiver" dated September 27, 1989, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on February 6, 1990, DMO's petition and solicited comments, data and information respecting the petition. 55 FR 4004. DMO also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on January 31, 1990. 55 FR 4004, February 6, 1990.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with the Federal Trade Commission (FTC) concerning the DMO petition. The FTC did not have any objections to the issuance of a waiver to DMO.

Assertions and Determinations

DMO's Petition seeks a waiver from the DOE test provisions that require a 1.5-minutes time delay between the ignition of the burner and the starting of the circulating air blower. DMO requests the allowance to test using a 30-seconds blower time delay when testing its WCS(-) series condensing gas furnaces. DMO states that since the 30-seconds

delay is indicative of how this model actually operates and since such a delay results in an improvement in efficiency of approximately 2.0 percent, the waiver should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minutes delay. DMO indicates that it is unable to take advantage of any of these exceptions for the WCS(-) series condensing gas furnaces.

Since the blower controls incorporated on the DMO furnace are designed to impose a 30-seconds blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-seconds blower time delay when testing the DMO WCS(-) series furnace. Accordingly, with regard to testing the WCS(-) series furnace, today's Decision and Order exempts DMO from the existing provisions regarding blower controls and allows testing with the 30-seconds delay.

It is therefore, ordered that:

(1) The "Petition for Waiver" filed by the DMO Industries (Case No. F-020) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, the DMO Industries shall be permitted to test its WCS(-) series condensing gas furnace on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas-and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 in ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5-minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5-minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5-minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gauge of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, DMO Industries shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the WCS(-) series condensing gas furnace manufactured by DMO Industries.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective January 31, 1991 this Waiver supersedes the Interim Waiver granted DMO Industries on January 31, 1990. 55 FR 4004, February 6, 1990, (Case No. F-020).

Issued in Washington, DC, January 31, 1991.

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91-2681 Filed 1-31-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3902-9]

Acid Rain Advisory Committee; Notice of Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the Acid Deposition Control title of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the Acid Rain Advisory Committee will hold an open meeting from 9 a.m. to 5 p.m. on February 20, 21, and 22 at the Ramada Renaissance Hotel, Washington Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478-2900. At its first meeting, ARAC established four subcommittees: allowance trading, permits and technology, emissions monitoring, and energy conservation and renewables. It is anticipated that on February 20 and for a half day on February 21, these subcommittees will meet to discuss and frame issues related to their areas of assignment. The subcommittees will meet concurrently in different rooms. Seating in those rooms will be limited and publicly available on a first come, first serve basis. It is anticipated that on the afternoon of February 21 and on February 22, the full committee will meet to hear presentations and engage in discussions on issues developed in the subcommittees.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting, including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents together with related documents prepared for previous ARAC meetings will be available in the EPA Air Docket Number A-90-39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

DATES OF FUTURE ARAC MEETINGS: ARAC will hold its fourth meeting on March 20, 21, and 22, 1991, and will hold its fifth meeting on April 29 and 30, and May 1, 1991. These meetings will be held in the Washington, DC area. Times and exact locations will be the subject of future **Federal Register** notices.

FOR FURTHER INFORMATION: Concerning ARAC or its activities, please contact Mr. Paul Horwitz, Designated Federal Official to the Committee at (202) 475-9400; fax, (202) 252-0892, or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air and Radiation, Washington, DC 20460.

Dated: February 1, 1991.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91–2800 Filed 2–4–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions in the State of Oklahoma, the Federal Deposit Insurance Corporation ("FDIC") publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county of Oklahoma in which the agencies wish to effect the conveyance or release of interests in land.

NOTICES: Pursuant to Section 11 of the Federal Deposit Insurance ("FDA") Act (12 U.S.C. 1821), as amended by Section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under Section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under Section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the defunct Federal Savings and Loan Insurance Corporation ("FSLIC"), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also requires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Oklahoma City Consolidated Office. These employees include: Teresa R. Koechel, M.F. Houlihan, Jr., Deborah N. Biggers, D. Charles Welsh, Tommy K. Sears, and John H. Fisher.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the case and management of acquired assets; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Federal Deposit Insurance Corporation.

Dated: January 30, 1991.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–2659 Filed 2–4–91; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Southeastern Caribbean Discussion et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Martime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011038–007.

Title: southeastern Caribbean Discussion Agreement.

Parties: United States Atlantic and Gulf/Southeastern Caribbean Conference, Trailer Marine Transport Corporation, Tecmarine Line, Inc., Bernuth Lines, North American Caribbean Line Ltd., Blue Caribe Line.

Synopsis: The proposed amendment would add Seaboard Marine, Ltd. as an independent carrier party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–011162–007.

Title: Panam Discussion Agreement.

Parties: United States Panama Freight Association, Lykes Bros. Steamship Co. Inc., Ecuadorian Line, Inc., Central America Shippers, Inc., Nedlloyd Lines, Transportes Navieros Equatorianos.

Synopsis: The proposed amendment would add Sea-Land Service, Inc., as an independent carrier party to the Agreement. The parties have requested a shortened review period.

Dated: January 30, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-2576 Filed 2-4-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

David M. Cox; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 25, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. David M. Cox, Ennis, Texas; to acquire an additional 0.21 percent of the voting shares of First National Bancorporation of Ennis, Inc., Ennis, Texas, for a total of 10.16 percent, and thereby indirectly acquire First National Bank of Ennis, Ennis, Texas.

Board of Governors of the Federal Reserve System, January 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2610 Filed 2-4-91; 8:45 am]

BILLING CODE 6210-01-F

ENFIN, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 26, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. ENFIN, Inc., Solon, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Enterprise Bank, Solon, Ohio, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2611 Filed 2-4-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010791 AND 011891

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Unocal Corporation, New York Life Insurance Company, PPN/Park Drilling Limited Partnership	91-0434	01/07/91
North American Property Unit Trust, Crow-Harrod-Kelly #1 Limited Partnership, Largo Mall Shopping Center	91-0437	01/07/91
Toshiyuki Sato, A.L. Shelly, Shelton Properties, Inc.	91-0441	01/07/91
British Steel plc, George W. Tippins, Tuscaloosa Steel Corporation	91-0449	01/07/91
El Camino Resources, Ltd., Jean-Louis Bouchard, Econocom-USA, Inc.	91-0451	01/07/91
The Williams Companies, Inc., Centel Corporation, Centel Communications Company	91-0456	01/07/91
International Paper Company, George-Pacific Corporation, Nekoosa Packaging France Corporation	91-0412	01/09/91
Waste Management, Inc., Martin DeMatteo, Jr., M. DeMatteo Construction Co. & Saugus Turbine Company	91-0447	01/09/91
James Moran, Perpetual Financial Corporation, Perpetual Leasing Services, Inc. and Newco	91-0340	01/10/91
E. I. du Pont de Nemours and Company, Osborne J. Call, Flying J Inc.	91-0405	01/10/91
Joseph T. Charles, Rockwell International Corporation, Rockwell International Corporation	91-0448	01/10/91
New England Critical Care, Incorporated, Care Plus, Inc., Care Plus, Inc.	91-0391	01/11/91
Care Plus, Inc., New England Critical Care, Incorporated, New England Critical Care, Incorported	91-0397	01/11/91
Alco Standard Corporation, Sloan Paper Company, Sloan Paper Company	91-0435	01/11/91
Robert G. Thomson, SECORP National Inc., SECORP National Inc.	91-0461	01/11/91
GEICO Corporation, Southern Heritage Insurance Company, Southern Heritage Insurance Company	91-0466	01/11/91
Mr. A. H. Heineken, Mr. Leo Van Munching, Jr., Van Munching & Co., Inc.	91-0467	01/11/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010791 AND 011891—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
National City Corporation, Multibank Financial Corp., Multibank Financial Corp.	91-0469	01/11/91
Illinois Tool Works Inc., Phillips Plastics Corporation, Phillips Plastics Corporation	91-0411	01/14/91
General Electric Company, R.H. Macy & Co., R.H. Macy & Co.	91-0431	01/14/91
Dr. H. J. Smead, Varian Associates, Inc., EOSP, Co., VSO, Co. and certain assets of VAI	91-0438	01/14/91
Dr. H.J. Smead, DKP Electronics, DKP Electronics TVH	91-0440	01/14/91
Trygg-Hansa Mutual Life Insurance Company, TVH Acquisition Corporation, TVH Acquisition Corporation	91-0457	01/14/91
Industrial Mutual Insurance Company, TVH Acquisition Corporation, TVH Acquisition Corporation	91-0458	01/14/91
Trygg-Hansa Holding AB, TVH Acquisition Corporation, TVH Acquisition Corporation	91-0459	01/14/91
SPP Insurance Company, TVH Acquisition Corporation, TVH Acquisition Corporation	91-0460	01/14/91
Mitsuo Kokufu, Christopher B. Hemmeter, Hemmeter-VMS Kauai Company I	91-0472	01/14/91
Mitsuo Kokufu, Peter Morris, Hemmeter-VMS Kauai Company I	91-0473	01/14/91
Ronald J. Haan, Telesphere Communications, Inc., Telesphere Communications, Inc.	91-0479	01/14/91
Mitsuo Kokufu, 900 Partners' Investments, The Lihue Plantation Company, Ltd.	91-0476	01/15/91
Alert Income Partners V, Ltd., Holmes Protection Group, Inc., Holmes Protection of New Jersey, Inc.	91-0484	01/16/91
UAL Corporation, Pan Am Corporation, Pan American World Airways, Inc.	91-0135	01/17/91
Merrill Lynch & Co., Inc., Wherehouse Partners, WEI Holdings, Inc.	91-0418	01/18/91
AMR Corporation, Carl C. Icahn, Trans World Airlines, Inc.	91-0423	01/18/91
Douglas H. Wolf, Dana Corporation, CCD Air Six, Inc.	91-0427	01/18/91
Sandvik AB, ESSTAR Incorporated, Milford Products Corporation	91-0430	01/18/91
Wasserstein Perella Partners, L.P., Isosceles PLC, Isosceles PLC	91-0445	01/18/91
Energy Service Company, Inc., Chevron Corporation, TOC-Argosy, Inc.	91-0450	01/18/91
Mobil Corporation, Phillips Petroleum Company, Phillips 66 Natural Gas Company	91-0452	01/18/91
Phillips Petroleum Company, Mobil Corporation, Mobil Producing Texas & New Mexico Inc.	91-0453	01/18/91
Hanlin Group, Inc., Buffton Corporation, National Pipe Company	91-0478	01/18/91
ERLY Industries Inc., American Rice, Inc., American Rice, Inc.	91-0485	01/18/91
Louise Blackman Tollefson, NYMAGIC, Inc., NYMAGIC, Inc.	91-0487	01/18/91
Estate of John N. Blackman, NYMAGIC, Inc., NYMAGIC, Inc.	91-0488	01/18/91
Office Depot, Inc., The Office Club, Inc., The Office Club, Inc.	91-0497	01/18/91

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 91-2641 Filed 2-4-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 872 3150]

Asics Tiger Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California manufacturer of athletic shoes from making performance and injury-reduction claims about its athletic shoes unless it possesses competent and reliable evidence to substantiate those claims.

DATES: Comments must be received on or before April 8, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:
Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Asics Tiger Corporation, a corporation, hereinafter referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease desist from the use of certain acts and practices being investigated,

It is Hereby Agreed by and between Asics Tiger Corporation by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Asics Tiger Corporation is a corporation organized, existing, and doing business under and by virtue of the law of the State of California. Respondent's office and principal place of business is located at 10540 Talbert Avenue, Fountain Valley, California 92708.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The

Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in constructing the terms of the order, provided, however, that no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Part I

It is ordered, That respondent Acics Tiger Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of athletic shoes in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, if contrary to fact, that tests prove:

A. That Asics' GT II running shoes absorb 28% more impact than athletic shoes relying on air as a shock absorber, including the leading "air" shoe.

B. That Asics' GT II and Gel-Lyte shoes absorb more shock than New Balance 995, Brooks Nexus, and Nike Air Max.

C. That Asics' Ensemble aerobic shoes absorb 15% more shock than Reebok Instructor, 17% more shock than Avia 440, and 23% more shock than Nike Air Conditioner including "air" shoes.

D. That persons using Asics' athletic shoes will suffer fewer impact-related injuries than person using other athletic shoes including "air" shoes.

Part II

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary or division or other device, in connection with the advertising, offering for sale, sale or distribution of any athletic shoes, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

Part III

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any athletic shoes in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, any performance characteristic(s) of any such product unless at the time of making such representation respondent possesses and relies upon a reasonable basis consisting of competent and reliable evidence which substantiates the representation. To the extent such evidence consists of tests, experiments, analysis, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

Part IV

It is further ordered that for three (3) years after the date of the last dissemination of the representation to which they pertain, respondent shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All test reports, studies, surveys, demonstrations or other materials in its possession or control that contradict, qualify, or call into question the representation or the basis upon which respondent relied for such representation, including complaints from consumers.

Part V

It is further ordered that respondent shall forthwith distribute a copy of this order to all operating divisions, subsidiaries, franchisees, officers, managerial employees, and all of its employees or agents engaged in the preparation and placement of advertisements or promotional materials covered by this order and shall obtain from each such employee a signed statement acknowledging receipt of the order.

Part VI

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations under this order.

Part VII

It is further ordered that respondent shall, within sixty (60) days after service upon it of this order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Propsed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Asics Tiger Corporation ("Asics").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising for Asics' "gel" shoes, *i.e.*, athletic shoes containing encapsulated gel pads in the soles. The Commission's complaint charges that the respondent's advertising contained unsubstantiated and false performance and injury reduction claims. In particular, the compliant alleges that Asics lacked adequate substantiation for claims that its gel running shoes would absorb 28% more shock than competitors' air shoes; that the Asics GT II and Gel-Lyte would absorb more shock than the New Balance 995, Brooks Nexus, and the Nike Air Max; that Asics' gel aerobic shoes would absorb 15%, 17%, and 23% more shock than Reebok Instructor, Avia 440, and Nike Air Conditioner, respectively; and that persons wearing gel shoes would suffer fewer impact-related injuries than persons wearing other shoes. The compliant also alleges that respondent's claims that "scientific tests proved" the superior shock absorption and impact-related injury reduction claims stated above for its gel shoes were false.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent to cease making claims, contrary to fact, that tests prove the following: That its running shoes absorb 28% more impact than its competitors' shoes; that Asics GT II and Gel-Lyte absorb more impact than the New Balance 995, Brooks Nexus, and Nike Air Max; that its aerobic shoes absorb 15%, 17%, and 23% more impact than Reeebok Instructor, Avia 440, and Nike Air Conditioner, respectively; and, that persons wearing gel shoes will suffer fewer impact-related injuries than persons wearing other shoes.

Parts II and III are fencing-in provisions. Part II prohibits respondent in connection with the advertising, offering for sale, sale, or distribution of athletic shoes from misrepresenting the contents, validity, or results of any tests or study. Part III prohibits respondent from representing the performance characteristics of any athletic shoes, unless the company has a reasonable basis consisting of competent and reliable evidence which substantiates the representations. If such evidence consists of studies or similar evidence, then they should be conducted and evaluated in an objective manner by qualified persons using generally accepted procedures.

In addition, the proposed order requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance withn the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-2642 Filed 2-4-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3080]

Richard B. Pallack, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California retailer of men's clothing and accessories, and an officer of the corporation, from importing, transporting, distributing, delivering, or selling wool products that are misbranded; from removing or multilating any stamp, tag, label or other identification required by the Wool Products Labeling Act, prior to the time the wool product is sold/delivered; and from misrepresenting the country of origin of such products. Respondents would also be required to distribute a copy of the order to all present and future personnel.

DATES: Comments must be received on or before April 8, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St., and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul Roark, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, CA 90024. (213) 575-7890.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Richard B. Pallack, Inc., a corporation, and Richard B. Pallack individually and as an officer of said corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Richard B. Pallack, Inc., a corporation and Richard B. Pallack, individually and as an officer of said corporation, and it now appearing that Richard B. Pallack, Inc., a corporation, and Richard B. Pallack, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is Hereby Agreed by and between Richard B. Pallack, Inc., by its duty authorized officer, and Richard B. Pallack, individually and as an officer of said corporation, and their attorney, and

counsel for the Federal Trade Commission that:

1. Proposed respondent Richard B. Pallack, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4554 Sherman Oaks Avenue, Sherman Oaks, CA 91403.

Proposed respondent Richard B. Pallack is the sole shareholder and sole officer of Richard B. Pallack, Inc. He formulates directs and controls the policies, acts and practices of said corporation and his office and principal place of business are the same as Richard B. Pallack, Inc.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the compliant and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Richard B. Pallack, Inc., a corporation, its successors and assigns, and its officers, and Richard B. Pallack, individually and an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with wool products, as "wool products" are defined in the Wool Products Labeling Act of 1939, as amended, (hereinafter "Wool Act") do forthwith cease and desist from importing or introducing into commerce, transporting, distributing, delivering for shipment, shipping, offering for sale, or selling in commerce, as "commerce" is defined in the Wool Act, wool products are misbranded in that they:

A. Are falsely or deceptively stamped, tagged, labeled or otherwise identified;

B. Do not have securely affixed to, or placed on, each such product in the location, manner, and form required by the Wool Act, a stamp, tag, label or other means of identification correctly showing, in a clear and conspicuous manner, each element of information required to be disclosed by section 4(a)(2) of the Wool Act.

II

It is further ordered that respondents Richard B. Pallack, Inc., a corporation, its successors and assigns, and its officers, and Richard B. Pallack, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with wool products, as "wool products" are defined in the Wool Act, do forthwith cease and desist from removing or mutiliating, or causing or participating in the removal or mutilation of, any stamp, tag, label or other identification required by the Wool Act to be affixed to wool products, prior to the time any such wool product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to section 4(a)(2) of the Wool Act.

III

It is further ordered that respondents Richard B. Pallack, Inc., a corporation, its successors and assigns, and its officers, and Richard B. Pallack, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the purchasing, advertising, offering for sale, sale and distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from misrepresenting in any manner, the country of origin of any such product.

IV

It is further ordered that respondents distribute a copy of this order to all present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of said order.

V

It is further ordered that, whenever a stamp, tag, label or other form of identification which shows information required by the Wool Act is substituted or otherwise removed, respondents shall keep records for a period of three years sufficient to show the information set forth on the removed stamp, tag, label,

or other form of identification, as well as the name or names of the person or persons from whom such product was received.

VI

It is further ordered that respondents shall, for a period of five (5) years after this order becomes final, maintain and, upon reasonable notice, make available to the Federal Trade Commission for inspection and copying all documents that relate to the manner and form in which respondents have compiled with this order.

VII

It is further ordered that respondents shall, for a period of ten (10) years from the date of this Order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Richard B. Pallack, Inc., such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VIII

It is further ordered that the individual respondent named herein shall, for a period of ten (10) years from the date of this order, promptly notify the Commission of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

IX

It is further ordered that respondents shall, within sixty (60) days after the date of service of this order, submit a report, in writing, to the Federal Trade Commission setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Richard B. Pallack, Inc., a corporation, and Richard B. Pallack, individually.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint in this matter alleges that Richard B. Pallack, Inc., and Richard B. Pallack, individually, are engaged in the retail sale of wool products, including men's suits, sport coats, and other clothing and accessories that were imported into the United States.

Proposed respondents, according to the proposed complaint, have imported into commerce, introduced in commerce, transported, distributed, delivered for shipment, shipped, offered for sale, or sold in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

Proposed respondents, according to the complaint, misbranded certain wool products in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Sections 4(a)(2)(D) and 4(f) of the Wool Act and the rules and regulations promulgated under the Act. Proposed respondents have, therefore, allegedly violated Section 3 of the Wool Act.

According to the proposed complaint, among such misbranded wool products were men's suits, sport coats and other clothing that did not have a stamp, tag, label or other means of identification on the inside center of the neck or elsewhere, a stamp, tag, label, or other means of identification showing the name of the country where processed or manufactured.

Proposed respondents have also allegedly caused or participated in the removal or mutilation of stamps, tags, labels or other means of identifying the countries where wool products were processed or manufactured, with intent to violate the provisions of the Wool Act. The complaint alleges that pursuant to Section 5(b) of the Wool Act, such removals and mutilations are unfair methods of competition, and unfair and deceptive acts of practices, in commerce with the meaning of the Federal Trade Commission Act.

The proposed complaint also alleges that proposed respondents' acts and practices were, and are, in violation of the Wool Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition, and unfair and deceptive acts or practices within the meaning of the Federal Trade Commission Act, as amended.

Proposed respondents allegedly have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by proposed respondents. The acts and practices of proposed respondents allegedly were and are to the prejudice and injury of the public and proposed respondents' competitors.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-2643 Filed 2-4-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443-6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408–727–5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703–691–9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900

The certification of this laboratory (Bio-Analytical Technologies, Chicago, IL) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 2183 (Jan. 22, 1991).

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–8263

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–365–3840. (Name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800

ElSohly Laboratories, Inc., 1215½ Jackson Ave., Oxford, MS 38655, 601–236–2609

Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205–9998, 205–934–0985

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harris Medical Laboratory, P.O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817–878–5600

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–225–9414 (outside MI)/800–328–4142 (MI only)

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, P. O. Box 4350, Woodland Hills, CA 91365, 818–718–0115/800–331–8670 (outside CA)/800–464–7081 (CA only). (Name changed: formerly Abused Drug Laboratories)

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203–334–6187

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631

Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800–251–0089

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466

Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414–257–7439

Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309–672–4928

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100. (Name changed: formerly Maryland Medical Laboratory, Inc.)

National Health Laboratories Inc., 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627(outside NC)/800–642–0894(NC only)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050. (Name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201–769–8500

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061

The certification of this laboratory (Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 50589 (Dec. 7, 1990).

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770

Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303–792–2822

Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800–631–5250

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286

S.E.D. Medical Laboratories, 500 Walter NE Suite 500, Albuquerque, NM 87102, 505–848–8800

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010. (Name changed: formerly International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447. (Name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205. (Name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301. (Name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800–338–0166

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052

St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314–577–8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91–2758 Filed 2–4–91; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Consultant Meeting

The Center for Prevention Services (CPS) of the Centers for Disease Control (CDC) announces the following meeting.

Name: CARE Act Consultant Meeting.

Time and Date: 9 a.m.–3 p.m., Tuesday, February 19, 1991.

Place: Travelodge Hotel-Atlanta, North Druid Hills Road at I–85, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: Consultants will consider issues related to CDC's implementation of the CARE Act and review the fiscal year 1992 draft program announcement for State and local health departments concerning human immunodeficiency virus (HIV) formula grants for prevention and early intervention.

Matters to be Discussed: Consultants will discuss issues related to the implementation of early intervention programs and linkage with prevention programs.

Contact Person for More Information: Gary R. West, Assistant Deputy Director (HIV), CPS, CDC, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, telephone 404/639–1480 or FTS 236–1480.

Dated: January 29, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–2651 Filed 2–4–91; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91F–0020]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphoric acid, mono- and dihexyl esters reacted with tetramethylnonylamines and C_{11-14} alkylamines as components of surface lubricants that may contact food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 0B4232) has been filed by the Ciba-Geigy Corp., Seven Skyline D., Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in § 178.3910 *Surface lubricants in the manufacture of metallic articles* (21 CFR 178.3910) to provide for the safe use of phosphoric acid, mono- and dihexyl esters reacted with tetramethylnonylamines and C_{11-14} alkylamines as components of surface lubricants that may contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 29, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–2607 Filed 2–4–91; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

GENERIC DRUGS ADVISORY COMMITTEE

Date, time and place. February 25 and 26, 1991, 8 a.m., Bethesda Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, February 25, 1991, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; open committee discussion, February 26, 1991, 8 a.m. to 4 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), room 8B–45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and makes appropriate recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Director of the Center for Drug Evaluation and Research. The committee may also review agency-sponsored intramural and extramural biomedical research programs in support of FDA's generic drugs regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 15, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will develop, evaluate, and discuss methodology leading to generic formulations of a conjugated estrogens product.

Closed committee deliberations. The committee will hear and discuss trade secret and/or confidential commercial information relevant to pending issues relative to conjugated estrogen formulations. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committee shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, room 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall

not be closed include the review, discussion, and evaluation of preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 28, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-2573 Filed 2-4-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement and Proposed Special Consideration for Allied Health Project Grants

The Health Resources and Services Administration (HRSA), announces that applications will be accepted for fiscal year (FY) 1991 Allied Health Project Grants. This grant program is authorized under section 796, title VII, of the Public Health Service Act (the Act), as amended by the Health Professions Reauthorization Act of 1988, Public Law 100-607.

Approximately $1,642,000 of FY 1991 funds are available for Section 796 grants. The continuation of multi-year projects approved in prior years is estimated to cost $609,000. Approximately $1,033,000 is expected to be available for 8 competitive awards averaging $129,125 each. Grants will be awarded on a competitive basis.

Purposes

Section 796 authorizes the award of grants for the costs of planning, developing, establishing, operating, and evaluating projects for:

(1) Improving and strengthening the effectiveness of allied health administration, program directors, faculty, and clinical faculty;

(2) Improving and expanding program enrollments in those professions in greatest demand and whose services are most needed by the elderly;

(3) Promoting the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly through interdisciplinary training programs;

(4) Emphasizing innovative models to link allied health clinical practice, education and research;

(5) Adding and strengthening curriculum units in allied health programs to include knowledge and practice concerning prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; and

(6) The recruitment of individuals into allied health professions including projects for:

(A) The identification and recruitment of highly qualified individuals, including the provision of educational and work experiences for recruits at the secondary and collegiate levels;

(B) The identification and recruitment of minority and disadvantaged students, including the provision of remedial and tutorial services prior and subsequent to admission, the provision of work-study programs for secondary students, and recruitment activities directed toward primary school students; and

(C) The coordination and improvement of recruitment efforts among official and voluntary agencies and institutions, including official departments of education, at the city, country, and State, or regional level.

Healthy People 2000 Objectives

The PHS is encouraging applicants to submit proposals that address Healthy People 2000 objectives, as applicable. In developing your application for this program, please consider the 22 priority areas set forth in the report. One of the legislative purposes of section 796 is to add and strengthen curriculum units in allied health programs to include knowledge and practice concerning prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics. This purpose provides the flexibility for applicants to address any of the 22 priority areas. Applicants are encouraged to address any relationship to these areas in their proposals. A list of these priority areas will be included in the application kit.

Training Service Linkage

As part of its long-range planning, the HRSA will be targeting its efforts to strengthening linkages between its training programs and Public Health Service programs which provide comprehensive primary care services to the underserved.

Eligible Applicants

To be eligible for a grant, an applicant must be a school, university or other public or nonprofit private educational entity which provides for allied health personnel education and training.

Review Criteria

The review criteria, stated below, which were established in FY 1990 after public comment, will remain unchanged in FY 1991.

- The extent to which the proposed project meets the legislative purpose;
- The background and rationale for the proposed project;
- The extent to which the project contains clearly stated realistic and achievable objectives;
- The extent to which the project contains a methodology which is integrated and comparable with project objectives, including collaborative arrangements and feasible workplans;
- The evaluation plans and procedures for program and trainees, if involved;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

In addition, the following mechanism may be applied in determining the funding of approved applications.

Special Considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Special Consideration for Fiscal Year 1991

In the review of applications, the HRSA is proposing that special consideration be given to the following:

Applicants demonstrating affiliation agreements for interdisciplinary training experiences in one or more of the following: a nursing home; hospital or ambulatory care center providing substantial geriatric health care; Migrant Health Center (section 329 of the Act); Community Health Center (section 330 of the Act); Health Professional Shortage Area (section 332 of the Act); Area Health Education Center (section 781(a) of the Act); or a State or local public health or designated clinic or

center serving an undeserved population, or a rural health clinic or other facility with training opportunities in a rural area.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers; section 330 authorizes support for community health care services to medically underserved populations; section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas; and section 781(a) authorizes support for Area Health Education Centers to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system.

The proposes special consideration does not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect the proposed special consideration are encouraged to submit applications.

Interested persons are invited to comment on the proposed special consideration. Normally the comment period would be 60 days but due to the need to implement any changes for the FY 1991 award cycle, this comment period has been reduced to 30 days.

All comments received on or before March 7, 1991, will be considered before the final special consideration is established. No funds will be allocated or final selections made until a final notice is published stating whether the final special consideration will be applied.

Written comments should be addressed to: Director, Division of Associated & Dental Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, Bureau of Health Professions at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The application deadline date is March 11, 1991. Applications will be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

Questions regarding programmatic information should be directed to:

Program Officer, Associated Health Professions Branch, Division of Associated and Dental Health Professions

Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6763.

Application forms will be sent to FY 1990 applicants and to those who request kits.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6857.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form (PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and Supplement) for this program has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The *Federal Catalog of Domestic Assistance* number for this program is 93.191. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: December 31, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 91–2606 Filed 2–4–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 24–27, 1991, Guest Quarters Suite Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public on February 24, from 7 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 24, from approximately 8 p.m. to adjournment on February 27, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, room 550B, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 15, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–2594 Filed 2–4–91; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 24, 25, and 26, 1991, at the Hyatt Regency Bethesda, One Bethesda

Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on February 24, from 8 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 25, from approximately 8 a.m. until adjournment on February 26, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 15, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–2595 Filed 2–4–91; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings of the National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Training Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 14–15, 1991, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet together on February 13; in Building 31, Conference Room 9.

The Council meeting will be open to the public on February 14 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., section 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on February 14 and from 8:30 a.m. to adjournment on February 15 for the review, discussion and evaluation of individual grant applications. The meeting of the Research Subcommittee and the Training Subcommittee of the above Council on February 13, will be closed from 1 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A–15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 15, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–2596 Filed 2–4–91; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Social Security Ruling SSR 91–1c Work Deductions; Questionable Retirement, Extent and Value of Services

AGENCY: Social Security Administration, HHS.

ACTION: Notice of social security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security ruling 90–1c. This Ruling, which is based on a decision made by the United States Court of Appeals for the Eleventh Circuit, concerns the alleged retirement of an officer from a closely held family corporation.

EFFECTIVE DATE: February 5, 1991.

FOR FURTHER INFORMATION CONTACT: John W. Modler, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1713.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.40(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors' Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Dated: January 8, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Sections 203 (b) and (f) of the Social Security Act (42 U.S.C. 403 (b) and (f)) Work Deductions—Questionable Retirement—Extent and Value of Services

20 CFR 404.415(a) and 404.430.

Martin v. *Sullivan*, 894 F.2d 1520 (11th Cir. 1990)

The claimant applied for retirement insurance benefits, contending that he had retired from his closely held family business on January 1, 1985. The Secretary examined the manner in which the business of the corporation was conducted and found that, notwithstanding the change in the corporate titles of the claimant and his wife, and the salaries paid to each of them, the claimant had not stopped working and consequently that a portion of the salary paid to the claimant's wife was in fact earnings of the claimant. After the Secretary notified the claimant that he was not due benefits because of these excess earnings, the claimant sought review of that decision in a Federal district court. The district court upheld the Secretary's decision and the claimant appealed to the Court of Appeals for the Eleventh Circuit.

The evidence of record shows that the claimant was the sole proprietor of a band-orchestra business which he operated from his home. The claimant incorporated the business on September 14, 1982. He was the corporate president and his wife was the secretary-treasurer. On January 7, 1985, the wife became the corporate president and the claimant became the vice president-secretary.

The corporate tax returns for the fiscal year ending on August 31, 1983, show that the claimant's earnings significantly exceeded his wife's earnings for that year. For the fiscal years ending on August 31, 1984, and August 31, 1985, the tax returns show that the claimant's wife's earnings significantly exceeded the claimant's earnings. Despite the change in earnings, the evidence shows that the duties performed by the claimant and his wife remained virtually unchanged. The claimant made the business decisions, arranged the bookings, hired the musicians, did the promotional work, and determined corporate salaries. At the hearing before an administrative law judge on his claim, the claimant testified that he had directed or played with the band approximately 25 to 35 hours a month in 1985, even though there had been fewer bookings that year than in prior years.

The wife performed clerical work for the business. In her testimony at the administrative hearing, she stated that she could not recall whether she was paid for this work when the business was operated as a sole proprietorship. She was unable to approximate the corporate gross income for the fiscal year that had begun on September 1, 1985, and was unable to estimate how much business had declined that year from the previous year.

The court of appeals held that there was substantial evidence to support the Secretary's decision that the claimant had not retired on January 1, 1985, and that he was not due benefits because his earnings had exceeded the allowable amount. In arriving at this decision, the court adopted the Sixth Circuit's approach for evaluating questionable retirement in closely held family corporations and considered the following factors: (1) Whether the claimant continues to contribute substantial and valuable services to the corporation; (2) whether the family member receiving the income increases his or her duties commensurate with the increases in salary; and (3) whether the family member's income is used to support the claimant. The court noted that the claimant continued to manage and control the business. The court found that the value of the claimant's services was worth far more than the amount that had been reported as his salary on the corporate tax returns and that a significant portion of the claimant's true salary had been shifted to his wife without a commensurate change in their duties. The evidence showed that any decrease in business or income was attributable to the diminished market for the claimant's music rather than to his alleged retirement. The court stated that, because of her lack of knowledge of corporate affairs, the wife was at most a nominal officer in her husband's business. Finally, the court noted that the claimant's and wife's joint tax returns showed that the wife's alleged salary had been used for the claimant's support. In view of the foregoing, the court of appeals upheld the district court's affirmation of the Secretary's decision.

FAY, Circuit Judge:

This case establishes for the Eleventh Circuit the standards for piercing the veil of fictitious family salary arrangements for the purpose of obtaining Social Security benefits. Specifically, we must determine if plaintiff-appellant Tom Martin was retired from his closely held family corporation on January 1, 1985. Following appropriate proceedings by the Social Security Administration (SSA), the Secretary of Health and Human Services (Secretary) concluded that Martin was not eligible for Social Security payments because he was not retired as he had claimed. Pursuant to Martin's requested review of the denial of Social Security benefits, the district court upheld the decision of the Secretary. This appeal ensued. From our review of the Secretary's findings of fact and conclusions of law, we also have determined that Martin was not retired, and therefore not entitled to Social Security benefits. Accordingly, we affirm.

I. Facts: Trying To Dance to the Beat of the Music Man

A. Overture

Martin, born November 25, 1921, has been a self-employed musician and bandleader throughout his working life. Ultimately, he managed his own band-orchestra business, which included hiring musicians and soliciting bookings for musical engagements. Martin operated his sole proprietorship from his home in North Miami Beach, Florida. His wife performed clerical duties. She has no recollection of whether or not she was paid for her services while Martin's music business was a sole proprietorship. R–5–43.

On September 14, 1982, Martin incorporated his music business as Ted Martin Enterprises, Inc., for the express purpose of obtaining retirement benefits. R1–5–31. The address of the corporation remained the Martin residence. Martin was president and his wife was secretary-treasurer. They were the directors and each owned fifty percent of the corporate stock. After incorporation, Martin continued to manage the music business and his wife remained responsible for clerical duties. The corporate tax return for fiscal year 1982, September 14, 1982 to August 31, 1983 shows gross receipts of $186,683.00, with Martin' full-time salary as $22,254.00 and his wife's part-time salary as $5,215.00. R1–5–156–57.

B. The First Tune

Martin filed his first claim for retirement benefits with the SSA on September 28, 1983. R1–5–53–56. He stated that his total earnings in 1982 were $35,886.00 and that his expected earnings in 1983 and 1984 would be $24,000.00 and $5,000.00, respectively. R1–5–53, 55. Therefore, he claimed that he would be retired effective January 1, 1984, with monthly earnings in 1984 of no more than $430.00. R1–5–55. Martin's statement to the SSA represented that,

when he retired in 1984, he would do "less actual work," but that he would "continue making all major decisions." R1–5–111.

In response to an SSA contact, Martin represented that his wife would assume the duties of booking engagements, but he also conceded that she merely obtained information over the telephone and that he remained the decision maker regarding bookings. R1–5–57–58. The contact report concluded that Martin had failed to prove his intention of future retirement, and that his retirement appeared "remote." R1–5–58. The SSA Special Determination, issued on October 11, 1983, denied retirement benefits to Martin because he had not established his retirement or reduction in work activity.[1] Martin did not appeal the SSA determination.

C. Same Song, Second Verse

On January 5, 1984, Martin filed his second application for retirement benefits with the SSA. R1–5–60–63. Therein, he stated that his total earnings for 1982 were $21,000.00, and that his expected earnings for 1983 and 1984 would be $19,000.00 and $2,000.00, respectively. R1–5–62. Thus, Martin again claimed that he would retire effective January 1, 1984, earning no more than $430.00 a month in 1984. R1–5–62. In response to the application question asking if he had "ever filed an application for Social Security benefits," Martin answered "No." R1–5–60. The SSA contact report shows that Martin had not supported his claims of reduction in his corporate income and services, and that his intention to make his wife corporate president was "absurd," since she was not a musician and performed "very little meaningful work" in the business. R1–5–64.

The SSA Special Determination again denied retirement benefits to Martin because he had not verified his reduction in services.[2] Martin did not appeal this SSA decision. By letter on January 12, 1984, the SSA reminded Martin that he had filed a claim for retirement benefits in September, 1983, and that his second application would be treated as a duplicate claim; therefore, no action would be taken on the second request. R1–5–67. The SSA contact report on January 17, 1984, documents Martin's failure to provide information for a current and future earnings determination as follows: "It appears apparent that W/Es [wage earner's] sole intent is to avoid work deductions to get his payments. He is indefinite as to what he will earn and only states that it will (his earnings) be under the allowed amount since he knows payments could be initiated by saying so." R1–5–68. The corporate tax return for 1983, September 1, 1983 to August 31, 1984, shows gross receipts of $236,742.00 and Martin's full-time salary as $7,200.00 and his wife's part-time salary as $16,800.00. R1–5–148–49.

D. A Different Melody

The corporate tax return for 1984, September 1, 1984 to August 31, 1985, shows gross receipts of $213,142.00, Martin's full-time salary as $4,050.00, and his wife's part-time salary as $9,250.00. R1–5–171–72. On September 9, 1985, Martin's counsel sent to the SSA requested corporate tax returns for fiscal years 1982 and 1983, and the Martins' personal tax return for 1984. R1–5–124. Additionally, the corporate minutes of January 7, 1985 were enclosed in order to substantiate the change in corporate officers and Martin's retirement. Those minutes show that, effective January 7, 1985, Martin's wife became the new president of the corporation at a salary of $150.00 per week and that Martin became the new vice president-secretary at a salary of $100.00 per week. R1–5–130.

On November 22, 1985, the SSA issued a Special Determination that Martin was not entitled to retirement benefits because the wages proportioned to him and his spouse were not commensurate with their respective value to the corporation.[3] This determination was communicated to Martin in a letter dated November 26, 1985. R1–5–72. The letter also informed Martin that he could request reconsideration within sixty days as well as submit additional evidence.

On December 9, 1985, Martin requested a SSA hearing and stated his disagreement with the SSA determination as to his retirement as follows: "The value of my 1984 wages are irrelevant. I am alleging retirement since January 1, 1985. I am not alleging retirement at any time between November 25, 1983, upon attaining age 62, and December 31, 1984." R1–5–73. Therefore, Martin changed his song from his two previous, unsuccessful applications for retirement benefits by abandoning his prior claims of retirement in January 1, 1984, and asserting a new retirement date of January 1, 1985.[4]

On January 21, 1986, an administrative law judge in the SSA Office of Hearings and Appeals dismissed Martin's request for a hearing as premature, since he had not requested and obtained the requisite reconsidered determination. R1–5–76. Martin further was advised that, if he disagreed with the dismissal of his hearing request, then he had the right to request the Appeals Council to review the decision within sixty days. R1–5–75. On January 23, 1986, Martin's counsel completed a SSA Request for Reconsideration application, alleging Martin's retirement as of January 1, 1985. R1–5–78.

The SSA Reconsideration Review Section independently reviewed the evidence upon which the original SSA determination of Martin's ineligibility for retirement benefits was based. In affirming the initial decision, the Reconsideration Determination, issued on April 15, 1986, carefully detailed the record examination and reasoning under the applicable regulations. R1–5–80–85. The Reconsideration Determination explains the close SSA scrutiny required

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[1] In pertinent part, the SSA Special Determination states:

DETERMINATION:

It appears Mr. Martin incorporated to avoid having to report the business net profit solely to his record. By incorporating, he has the capability of paying the earnings via other means, i.e. salaries to family members, dividends, rents or loan repayments, unusual and not satisfactorily explained business expenses, etc.

Benefits cannot be paid until his retirement allegation is established and this cannot be verified in advance of the event. Only when Mr. Martin has furnished proof of his retirement or reduction in work activity can benefits be paid. An estimate of $24,000 is established for 1984, based on his 1983 estimate of earnings.

SSA Special Determination (Oct. 11, 1983). R1–5–59.

[2] In pertinent part, the SSA Special Determination states:

DECISION:

Inasmuch as nothing Mr. Martin has claimed in the way of reduction in services can be verified at this time, he is being placed in QR status and assessed the same rate of earnings for 1984 as he had in 1983 ($19,000). At the end of the year when personal and corporate tax returns are available, perhaps proof can be obtained to support his allegations.

SSA Special Determination (Jan. 11, 1984). R1–5–66.

[3] In pertinent part, the SSA Special Determination states:

DECISION:

The reduction in band bookings in 1984 appears reasonable, as does the reduction in total earnings to $24,000.00. However, the proportion of wages paid to the NH as musician/bandleader, and to his spouse as clerk/bookkeeper is not commensurate with their respective value to such a business, and is not supported by the evidence submitted. It is therefore determined that the NH's 1984 wages for deduction purposes is $20,000.00, and "QR" status continues.

SSA Special Determination (Nov. 22, 1985). R1–5–71.

[4] Appellant's brief summarizes the issue in this case as being the application of retirement benefits commencing in 1985, and states that "[a]ppellant concedes that he *unsuccessfully* attempted to secure retirement insurance for 1984, and that no benefits are payable prior to 1/1/85." Appellant's Brief at 12–13 (emphasis in original).

when an individual arranges his business affairs to acquire Social Security benefits that he would not obtain otherwise:

> There is no question that an individual is free to arrange his business affairs in any way he wishes even if his purposes [sic] is to thereby gain greater Social Security benefits than would otherwise be available. However, where it is apparent that an individual has acted with this particular purpose in mind, it is incumbent upon the Secretary to closely scrutinize the transaction and subsequent relationship of the parties involved to assure that that purported method of operation is one of substance and not merely form. It is well established that where the Secretary finds that the realities of the situation [sic] do not accord with the alleged arrangements, the parties are to be treated as reality dictates. Detemination [sic] of an indivdual's [sic] earnings for Social Security purposes must be related to the reality of his connection with the labor market and cannot be based on paper allocation of income.
>
> It is incumbent upon the Administration to apply strict standards and to closely scrutize [sic] transactions of individuals who are in a postion [sic] of influence or control of the amount of earnings reported for services rendered.

Reconsideration Determination at 2. R1–5–81.

The Reconsideration Determination contrasts the representations evidencing his retirement that Martin made to the SSA with the business realities that the internal investigation revealed. Martin stated that he was not performing as often as he had before 1985, that he worked fifteen to twenty hours per month in 1985 as opposed to that amount of time per week previously, and that his salary as vice president-secretary was $100,000 per week, while his wife earned $150.00 weekly as president. Martin's corporate tax returns, however, show gross receipts of $236,742.00 during fiscal year 1983 and gross receipts of $213,142.00 for fiscal year 1984. Since the 1984 fiscal year included eight months of 1985, when Martin claimed that he had curtailed his business activities, the Reconsideration Determination concludes that the slight decrease in gross earnings in the 1984 fiscal year compare with the previous year indicated that Martin's business activities and income had not declined significantly. R1–5–83.

Martin also represented to the SSA that neither he nor his wife solicited business, and that bookings were arranged by the party who hired the band with whom he and his wife had no dealings. The business expenses for the 1984 fiscal year, however, show telephone expenses of $1,076.00, travel and entertainment costs $4,028.80, gifts to clients of $735.00, office expenses of $4,318.00, and stationery and printing costs of $204.00. *Id.* These expenses indicated to the SSA that Martin actively solicited business. Furthermore, Martin informed the SSA that he has no suppliers since the musicians purchased their instruments and clothing. Nevertheless, the 1984 corporate tax return reveals payments of $1,549.00 for costumes and accessories and $401.00 for entertainment supplies. *Id.*

Additionally the Reconsideration Determination analyzes the corporate tax returns, showing the salaries of Martin and his wife. The 1982 return shows Martin's salary as $22,254.00 and his wife's compensation as $5,215.00, the 1983 return shows Martin's salary as $7,200.00 and his wife's pay as $16,800.00, and the 1984 return shows Martin's full-time salary as $4,050.00 and his wife's part-time earnings as $9,250.00. In affirming the initial SSA determination, the Reconsideration Determination concludes that Martin had shifted a significant portion of his salary to his wife, that the value of his services was more than his salary represented because his duties had remained the same, and that he was in a position to control the amount of his earnings.[5]

[5] The Reconsideration Determination contains the following summary and conclusions pursuant to the review of Martin's file:

> It appears that (starting with the fiscal year ending August 31, 1984) the claimant shifted a significant portion of his salary to his wife. This shift has intensified as he showed less for himself and more for is [sic] wife in the tax period ending August 31, 1985.
>
> There is no indication that the duties and responsibilities of the claimant's wife have increased and are commensurate with her additional computation [sic].
>
> In this situation, there is a closed family corporation which will continue to operate as it has in the past.
>
> There is no question that the claimant is still in a position of control of the corporation and can more or less regulate the reporting of his earnings in such a fashion that is advantageous to him, while at the same time there would really be no significant decrease in the total income from this business. It is inconceivable to find that the claimant will not do everything required of him in the furtherance of this business.
>
> Based on the information in file, it is determined that the claimant's duties and responsibilities have remained the same. The value of his services is worth much more than his payment. He is still an officer of his corporation and in a position of control. Moreover, he is in a position where he can control the amount of his earnings.
>
> Accordingly, the initial determination, that he has not retired according to aforementioned provisions of the Social Security Act and Regulations, is correct.
>
> The initial determination that Theodore Martin is not entitled to receive monthly Social Security benefits, based upon his work and earnings, is affirmed upon reconsideration.
>
> Reconsideration Determination at 5–6. R1–5–84–85.

E. The Hearing: Martin Sings the Blues

Martin filed a hearing request on April 28, 1986, and claimed that he disagreed with the SSA reconsidered determination because he was "retired." R1–5–86. The hearing to determine if Martin was retired on January 1, 1985, was held on July 3, 1986, before an administrative law judge. R1–5–17–52. In the hearing, Martin acknowledged that he managed the business, made the business decisions, arranged the bookings, determined the corporate salaries, and did promotional work. R1–5–25, 27, 34–35, 38. Yet, he stated that he worked in the business five to ten hours a week. R1–5–36. He testified that his wife's responsibilities remained the same after incorporation. R1–5–34. Nevertheless, they each received a salary of $400.00 per month after January, 1985. R1–5–36.

Martin explained the diminished bookings, fifteen to eighteen a month prior to January, 1985, compared with eight or nine per month after that date, as a reflection of the times and the general preference for younger bands playing rock music. R1–5–25, 27. Martin testified that he directed or played with the band on seven or eight bookings a month, or approximately twenty-five to thirty-five hours a month for which he was paid $60.00 per hour. R1–5–39–40. This money earned by Martin was in addition to his monthly corporate salary R1–5–48. Martin estimated that, for $100,000.00 gross income per year, he would make $10,000.00 to $15,000.00 net profit. R1–5–48–49. Martin also testified that the corporation had $80,000.00 in retained earnings, which he planned to invest in his retirement plan. R1–5–36–37.

Although his wife became the corporate president on January 1, 1985, she did not mention any management responsibilities when she testified as to her corporate duties. She stated that her "office work," performed at home, consisted of paper work, the payroll and computer work. R1–5–43–45. While she did the "banking," or made the deposits, she was unable to approximate the corporate gross income for the then current fiscal year, commencing September 1, 1985. R1–5–45–46. She also could not estimate the percentage that business was "down" for that year from the previous year. *Id.*

The administrative law judge issued his decision on November 25, 1986. R1–5–11–16. He reviewed Martin's various applications and representations in order to receive Social Security benefits as well as the applicable law and regulations. The decision contains the

following reasoning and conclusions regarding Martin's alleged "retirement;"

It is the intent of the Social Security Act that a potential beneficiary be retired within the meaning of such Act to be eligible for full monthly cash benefits. Similarly, it must also be recognized that the Administration has the authority, and indeed the obligation, to examine closely any arrangements which may have been fabricated for the purpose of qualifying for benefits or avoiding benefit deductions under the retirement test. In this regard, it is incumbent to review tax reporting strategies and bookkeeping intricacies to ascertain the actual facts bearing upon the issue at bar * * * In this case, it strongly appears that the claimant has been less than candid and the rearrangements of corporate wages are suspect. The credible evidence suggests that the claimant has retained the guidance, management and active control of the business operation. He admitted at the hearing that he continued to oversee the business status, as he had prior to the alleged "retirement".

* * * Notwithstanding the claimant's contentions it clearly appears that Mrs. Martin's duties constituted minimal clerical chores, the nature of which were virtually unchanged after January 1, 1985, the date on which the claimant alleged having retired. It is an inescapable conclusion that the value of the claimant's services to the corporation has been, and continues to be, worth far more than has been reported. Conversely, the unchanged duties and responsibilities of the claimant's wife are certainly not commensurate with her adjusted remuneration.

* * * The Social Security Act does not recognize the arbitrary rearrangement of or operation of a business between family members for the express purpose of circumventing the retirement test or of shifting Social Security coverage. To permit this type of action would contribute to a deficit in the Social Security Trust Fund, and would surely tend to defeat the related purpose of Title II of the Social Security Act.

The undersigned is aware that it is not improper for an individual to arrange his business affairs with intent to establish qualification for Social Security benefits. However, there is a duty to examine the resulting situation to determine if the source of income is a change of form rather than substance. In this case, the claimant's allegation of retirement and subsequent alleged assumption of his previous duties by his spouse is not realistic upon review of inconsistent written statements and testimony. The surrounding factual circumstances, in light of not totally credible testimony, support a conclusion that the situation is manipulated and contrived.

The evidence of record has shown that the various arrangements, with respect to arbitrary setting of salaries, the shifting of corporate office, the amount of time spent in business affairs and the continuing control of such affairs amount to no more than a device whereby the claimant has sought to divert his earning, for Social Security purposes to his wife though he maintained controls of the business (and income) and continued to perform essentially the same substantial services as he had prior to his alleged retirement. * * * By his testimony and other evidence, it is undisputed that the claimant has always been the dominant force behind the business entity and has continued to be. Despite the corporate arrangement, the preponderant evidence indicates that the claimant's wife is a nominal officer at most, and she has remained a subordinate employee of the corporation. It is the claimant who has been, and has remained in position to alter the payment of corporate salaries and to control, by his design, the profitability of the business venture. Further doubt is cast on the claimant's allegations of retirement upon review of the claimant's recent corporate and Federal income tax returns, which show the earnings of Mrs. Martin suddenly increasing over the past three years with a proportionately corresponding decrease in the earnings of the claimant. The valid nature of these entries is in question when one considers, as the claimant emphatically testified, that there had been declining business receipts during the same period.

In view of the foregoing, it has been concluded that the claimant was not "retired", within the meaning of the Social Security Act, throughout calender [sic] years 1984, 1985 and thus far in 1986. Considering the claimant's testimony as to the current number of hours spent playing with the band, his rate of pay, the current average number of playing engagements per month, and his pattern of earnings as evidenced by his Social Security earnings record, it has been concluded that, for Social Security retirement test purposes, the claimant's total yearly earnings for taxable years 1984 and 1985 has been annually $20,000 with a similar amount expected for the taxable year 1986.

Office of Hearings and Appeals Decision at 3–5 (Nov. 25, 1986). R1–5–13–15. Therefore, the administrative law judge determined that Martin had failed to establish that he was retired and entitled to Social Security benefits. Accompanying the decision was a notification informing Martin that he could request review of the decision by the SSA Appeals Council within sixty days. R1–45–10.

On December 1, 1986, Martin's counsel requested review of the administrative law judge's decision by the Appeals Council because Martin claimed that he had "been 'retired' since January 1, 1985." R1–5–5. Finding no basis under SSA regulations for granting a review of the hearing decision, the Appeals Council on February 2, 1987, denied Martin's request for review and informed him that the hearing decision was the final decision in his case by the Secretary.[6] R1–5–3–4. Martin further was advised that he had sixty days from receipt of the denial of review of the Appeals Council to file a complaint in district court.

F. The Score of Martin's Music in the District Court

Having exhausted his administrative remedies, Martin filed a complaint in the United States District Court for the Southern District of Florida on March 12, 1987, pursuant to section 205(g) of the Social Security Act (the Act), codified as amended at 42 U.S.C. 401(g). (1982).[7] R1–1. Plaintiff Martin moved for summary judgment alleging that he had proved that he was retired within the meaning of the Act, that he was entitled to perform significant services on a limited basis as an employee of the corporation, that his salary represented a valid corporate decision as to the value of his reduced services, that there was no evidence that wages were shifted, and that plaintiff's actual compensation was less than the amount which would necessitate a deduction. The Secretary moved for judgment on the pleadings, contending that the evidence showed that, after formation of the corporation, plaintiff and his wife shifted salaries in a manner which was not commensurate with the value of their services. Accordingly, defendant argued that Martin's services in 1985 were in excess of the exempt amount for retirement and that plaintiff failed to establish his retirement, effective January 1, 1985, for Social Security purposes.

After reviewing the entire record, the district court on June 10, 1988, issued its opinion affirming the Secretary's final

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[6] The following standards govern review of an administrative law judge's decision by the Appeals Council:

(a) The Appeals Council will review a case if—

(1) There appears to be abuse of discretion by the administrative law judge;

(2) There is an error of law;

(3) The action, findings or conclusions of the administrative law judge are not supported by substantial evidence; or

(4) There is a broad policy or procedural issue that may affect the general public interest.

(b) If new and material evidence is submitted with the request for review, the Appeals Council shall evaluate the entire record. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently in the record.

20 CFR § 416.1470 (1985).*

*Since the *Martin* case involves a title II claim, rather than a title XVI claim, the more appropriate citation would be 20 CFR § 404.970, which contains language that is identical to § 416.1470. [Ed. Note.]

[7] In pertinent part, § 405(g) provides:

Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business.

42 USC 405(g) (1982).

decision, denying plaintiff's motion for summary judgment, and granting defendant's motion for judgment on the pleadings. R1–14. The district court concluded that Martin had failed to meet his burden of proving that he had not earned wages in excess of the maximum amount provided by law. R1–14–11. Specifically, the district court found that the Secretary's decision was correct because Martin and his wife shifted incomes without substantial changes in their corporate services, and because the Martins' 1985 personal income tax return shows an unexplained dividend payment of $32,599.00. R1–14–10–11.

Plaintiff timely moved to alter or amend judgment under Federal Rule of Civil Procedure 59(e). R1–15. With respect to the dividend payment appearing on the Martins' 1985 personal income tax return, plaintiff argued that he had not been questioned by the SSA regarding this amount and that the dividends were first mentioned by the Secretary in the memorandum in support of his motion for judgment on the pleadings. Martin contended that he should not be denied Social Security benefits based on a factual issue first raised on judicial review and that the administrative record ordinarily could not be supplemented at the appellate level. Nevertheless, he added to the record a copy of the Martins' entire 1985 personal tax return in order to show that the subject dividends were from investments independent of Ted Martin Enterprises, Inc., as well as the Martins' 1986 individual tax return and the 1984 and 1985 corporate tax returns in order to show that the corporation was not paying him dividends in lieu of salary. Pending the district court's decision regarding altering or amending judgment, plaintiff appealed the district court's judgment to this court to preserve his appellate right in the event that the pending motion did not toll the appeal time under rule 4 of the Federal Rules of Appellate Procedure.[8]

The district court's December 12, 1988 order concerning plaintiff's Rule 59(e) motion reaffirms as reasonable the administrative law judge's conclusion that Martin was not retired within the meaning of the Act as well as its consideration of the subject dividends. R2–22. Regarding the dividends, the district court found that the tax information was part of the record reviewed by the administrative law judge and that plaintiff could have supplemented the record at the administrative hearing or before entry of the district court's judgment. Therefore, the district court rejected plaintiff's submission of new evidence at the judicial level when the proper forum was the administrative level and denied plaintiff's motion to alter or amend the judgment. Consequently, the district court concluded that all parties had the opportunity to present their positions and that the dividend issue was properly considered.[9] Because the district court's ruling on plaintiff's Rule 59(e) motion nullified Martin's former appeal to this court pursuant to rule 4(a)(4),[10] plaintiff Martin filed a second notice of appeal on December 14, 1988, from the June 10, 1988 final judgment of the district court to this court.

II. The Legal Orchestration

A. The Critical Review of Martin's Music

Our review of the Secretary's decision, as that of the district court, is demarcated by a deferential reconsideration of the findings of fact and an exacting examination of the conclusions of law. *See Graham* v. *Bowen*, 790 F.2d 1572, 1574–75 (11th Cir. 1986). The Act dictates that the Secretary's factual findings are conclusive if supported by "substantial evidence." [11] 42 U.S.C. 405(g) (1982). Therefore, "[w]e may not decide the facts anew, reweigh the evidence, or substitute our judgment for that of the Secretary;" rather "[w]e must scrutinize the record as a whole to determine if the decision reached is reasonable and supported by substantial evidence." *Bloodsworth* v. *Heckler*, 703 F.2d 1233, 1239 (11th Cir. 1983) (citations omitted); *see Powell ex rel. Powell* v. *Heckler*, 773 F.2d 1572, 1575 (11th Cir. 1985) (per curiam). Substantial evidence as to the Secretary's factual findings is more than a scintilla, but less than a preponderance: "[i]t is such relevant evidence as a reasonable person would accept as adequate to support a conclusion." [12] *Bloodsworth*, 703 F.2d at 1239 (citing *Richardson* v. *Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971)); *see McRoberts* v. *Bowen*, 841 F.2d 1077, 1080 (11th Cir. 1988); *Hillsman* v. *Bowen*, 804 F.2d 1179, 1180–81 (11th Cir. 1986) (per curiam); *Walden* v. *Schweiker*, 672 F.2d 835, 838–39 (11th Cir. 1982).

Even if the evidence preponderates against the Secretary's factual findings, we must affirm if the decision reached is supported by substantial evidence. *Sewell* v. *Bowen*, 792 F.2d 1065, 1067 (11th Cir. 1986); *MacGregor* v. *Bowen*, 786 F.2d 1050, 1053 (11th Cir. 1986); *Bloodsworth*, 703 F.2d at 1239.

In contrast to the deferential review accorded to the Secretary's findings of fact, the Secretary's conclusions of law, including applicable review standards, are not presumed valid. *MacGregor*, 786 F.2d at 1053; *Smith* v. *Heckler*, 707 F.2d 1284, 1285 (11th Cir. 1983); *Wiggins* v. *Schweiker*, 679 F.2d 1387, 1389 (11th Cir. 1982); *Smith* v. *Schweiker*, 646 F.2d 1075, 1076 (5th Cir. Unit A June 1981). The Secretary's failure to apply the correct legal standards or to provide the reviewing court with sufficient basis for a determination that proper legal principles have been followed mandates reversal. *Gibson* v. *Heckler*, 779 F.2d 619, 622 (11th Cir. 1986); *Bowen* v. *Heckler*, 748 F.2d 629, 635–36 (11th Cir. 1984); *Smith*, 707 F.2d at 1285; *Wiggins*,

[8] In opposition to plaintiff's motion to alter or amend the judgment, the defendant Secretary contended that plaintiff's raising arguments which could have been made before judgment was entered and offering evidence which did not constitute newly discovered evidence was an impermissible use of rule 59(e). R2–19–4. Concern that the district court might be persuaded by this argument was the basis for plaintiff's filing his notice of appeal while the district court's ruling on his rule 59(e) motion was pending.

[9] Appellant's reply brief states that the subject dividends were unexplained on the Martins' federal income tax return because they derived from investment unrelated to Ted Martin Enterprises, Inc., and, therefore, were presumptively excluded as excess wages pursuant to 42 U.S.C.A 411(a)(2). Appellant's Reply Brief at 18. Since we have found that the dividend payment on the Martins' 1985 personal income tax return is not determinative to our holding herein and that the shifting of corporate incomes without commensurate changes in corporate services is sufficient evidence for our decision, we will not address the dividend payment shown on the Martins' 1985 tax return.

[10] In pertinent part, rule 4(a)(4) provides:

If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party: * * * (iii) under rule 59 to alter or amend the judgment * * *, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above.

Fed.R.App.P. 4(a)(4).

[11] The Secretary's factual findings are reviewed by the following standard:

The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary, or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations.

42 U.S.C. 405(g) (1982).

[12] The Eleventh Circuit alternatively has held that " '[t]he "substantial evidence" test is met if a reasonable person would accept the evidence in the record as adequate to support the challenged conclusion.' " *Holladay* v. *Bowen*, 848 R.2d 1206, 1208 (11th Cir. 1988) (quoting *Boyd* v. *Heckler*, 704 F.2d 1207, 1209 (11th Cir. 1983)).

679 F.2d at 1389; *see Ambers* v. *Heckler*, 736 F.2d 1467, 1470 (11th Cir. 1984). Under the differing review standards for findings of fact and conclusions of law, we analyze the Secretary's decision in this case.

B. The Composition of the Law, Creating Cadence From Martin's Cacophony

The administrative law judge based his factual findings not only upon the hearing before him, but also upon Martin's entire SSA record, including his September 23, 1983 and January 5, 1984 applications for Social Security benefits, and his request for reconsideration of the SSA decision finding that he was not retired. The administrative law judge reviewed the responsibilities of Martin and his wife before and after the incorporation of their business in 1982. He found that Mrs. Martin's clerical duties remained the same.

The administrative law judge carefully examined the participation of Martin and his wife in the corporation as of January 1, 1985, the alleged date of Martin's retirement. He found the shifting of corporate offices, the arbitrary setting of salaries, the amount of time respectively spent by Martin and his wife on business matters, and the continuing control of the corporate business by Martin to be significant. The administrative law judge was influenced by Mrs. Martin's lack of knowledge of the current fiscal year at the hearing despite the fact that she was president of the corporation. He found that she was a nominal officer and that she remained a subordinate employee of the corporation. In contrast, Martin retained management and active control of the corporation after his alleged retirement.

The administrative law judge's review of the Martin's corporate and personal tax returns revealed that Martin's salary decreased proportionately with his wife's increase in salary over the period 1982 to 1985. He found that Martin's value to the corporation was worth more than had been reported and that the unchanged duties of his wife were not commensurate with her adjusted remuneration. Any decrease in business or income was attributed to the diminished market for Martin's music rather than to his retirement .The administrative law judge further determined that not only was Martin not retired in 1984 or 1985, but also that his annual earnings for those years were $20,000.00. Based upon his review of Martin's inconsistent written statements and testimony, the administrative law judge found that Martin's alleged retirement was unrealistic and that the various corporate arrangements were manipulated and contrived by Martin in order to divert his corporate earnings to his wife for Social Security purposes. After the Appeals Council declined review, the administrative law judge's decision became the final decision of the Secretary.

Our review of Martin's SSA record shows substantial evidence for the administrative law judge's factual findings. Because Martin maintained control of the corporation after January 1, 1985, we also find that he was not retired as of that date and that the allocation of compensation for Martin and his wife was not representative of their respective services. Even if our review of the facts were not so narrowly circumscribed, we would conclude that the factual findings of the Secretary are an accurate evaluation of the evidence.

Our review of the Secretary's legal conclusions requires a more exacting scrutiny. We must determine whether or not the Secretary correctly applied the relevant law to the facts in this case. The Act explicitly specifies the criteria for entitlement to Social Security benefits:

> Every individual who—
> (1) Is a fully insured individual (as defined in section 414(a) of this title),
> (2) Has attained age 62, and
> (3) Has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title),
> shall be entitled to an old-age insurance benefit for each month * * *.

42 U.S.C. 402(a) (Supp. II 1984). We conclude, as did the Secretary, that Martin met the ostensible requirements for Social Security benefits.

If a qualified applicant continues to receive employment income, then the Act authorizes the Secretary to impose deductions from retirement benefits in order to offset earnings in excess of statutory limits. 42 U.S.C. 403(b) (Supp. II 1984). The Act provides that deductions, based on a qualified individual's wages or self-employment income, shall be made from any payment to which an individual is entitled until the total of the deductions equals the individual's benefit for any month that he is charged with excess earnings.[13] Deductions are determined by applying the "annual earnings test."[14] 20 CFR 404.415 (1985). This test applies to two categories of income recipients: wage earners and self-employed individuals. In determining the entitlement of individuals in these two classifications during their initial or "grace year" of retirement, the Secretary must ascertain that the self-employed applicant does not continue to provide substantial services to his business, while the wage-earning applicant is restricted in the amount of his monthly earnings. 20 CFR 404.430, 404.435(c) & (d), 404.446 (1985).

As an officer of Ted Martin Enterprises, Inc., Martin is a wage-earning employee. 42 U.S.C. 410(j)(1) (1982). Therefore, the Secretary appropriately considered the amount of Martin's monthly earnings pursuant to the statutory exempt amounts. 20 CFR 404.430. Under the Act and regulations, a beneficiary under age sixty-five in taxable year 1985 could earn $5,400.00; benefits were deductible for any month that the beneficiary earned in excess of $450.00.[15] 42 U.S.C. 403(b) & (f) (Supp. II 1984); 49 FR 43,775, 43,777–78 (1984).

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[13] The provisions for benefit deductions is as follows:

(b) Deductions on account of work

(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(A) Such individual's benefit or benefits under section 402 of this title or any months, and

(B) If such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such individual's wages and self-employment income, if for such month he is charged with excess earnings, under the provision of subsection (f) of this section, equal to the total of benefits referred to in clauses (A) and (B). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings.

42 U.S.C. 403(b)(1) (Supp. II 1984).

[14] The annual earnings test is described as follows:

Deductions because of excess earnings: annual earnings test.

(a) *Deductions because of beneficiary's earnings.* Under the annual earnings test, deductions are made from monthly benefits . . . payable to a beneficiary for each month in a taxable year (whether a calendar year or a fiscal year) beginning after December 1954 in which the beneficiary is under age 72 (age 70 after December 1982) and to which excess earnings are charged under the provisions described in § 404.434.

20 CFR 404.415(a) (1985).

[15] We note that the Secretary used the exempt earning amounts applicable to a beneficiary aged sixty-five in 1985: $7,320.00 annually and $610.00 monthly. R1–5–12. Because Martin was not sixty-five on January 1, 1985, we have used the exempt earning amounts for a beneficiary under age sixty-five. Since the exempt earnings amounts for a beneficiary aged sixty-five are greater than those for a beneficiary aged sixty-five are greater than those for a beneficiary under sixty-five, Martin's earnings surpassed the applicable exempt amounts even more than the Secretary found. The Secretary's use of the incorrect exempt earning amounts, therefore, is inconsequential because the result remains the same.

The Act establishes a presumption of excess earnings as follows:

For purposes of clause (E) of paragraph (1)—

* * * * *

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8) until it is shown to the satisfaction of the Secretary that such individual did not render such services in such month for more than such amount.

42 U.S.C. 403(f)(4)(B) (1982) (emphasis added). Wages are defined to mean all employment remuneration, irrespective of the name by which the compensation is designated or the way in which it is paid. 20 CFR 404.1041 (1985). An applicant for benefits must submit the evidence necessary to establish that all entitlement requirements are met, and failure to submit such evidence shall be the basis for the SSA to determine that the conditions for receipt of Social Security benefits have not been met. 20 CFR 404.701–709 (1985). The claimant, therefore, has the burden of rebutting the presumption of excess earnings under the Act.[16] 42 U.S.C. 403(f)(4)(B). Utilizing this statutory presumption of excess earning for Martin, the Secretary properly concluded that he failed to provide an adequate rebuttal.

Furthermore, in the SSA Reconsideration Determination and the final decision of the Secretary, the intent of the Act was emphasized: In order for a potential beneficiary to receive monthly cash benefits, he must be retired under the Act. Therefore, the SSA has the authority and obligation to scrutinize any tax reporting strategies which appear to be for the purpose of qualifying for benefits and avoiding benefit deductions. While incorporation in order to receive Social Security benefits is permissible under the Act, the Secretary must be assured that the alleged retirement is legitimate, actual and bona fide. In this case, the shifting of corporate offices and salaries, while corporate responsibilities remained the same, created suspicion as to the realities of the situation.

The Eleventh Circuit had not addressed specifically the facts presented in this case. In addition to our direction from the Act and regulations, we approve and adopt the test used by the Sixth Circuit for "piercing the veil" of "fictitious family salary arrangements," where a claimant's alleged retirement and consequent shifting of salary to a family member is for the purpose of receiving Social Security benefits. *Heer* v. *Secretary of Health & Human Servs.*, 670 F. 2d 653, 655 (6th Cir. 1982) (per curiam). In *Heer*, the claimant and his wife were the sole shareholders and, respectively, president-secretary and vice president-treasurer of a closely held corporation. The corporation so operated for ten to twelve years, with the claimant receiving twice the salary of his wife. When the claimant's request for retirement was accepted by the Board of Directors, consisting of claimant and his wife, the wife was elected president at the claimant's former salary as president. The claimant continued to serve the corporation as secretary, but without compensation. Subsequently, the wife-president's salary was increased significantly. The facts revealed that, after the claimant's alleged retirement, his responsibilities changed very little, and that the duties of his wife did not alter appreciably.

In reviewing these facts, the Secretary found that the wife-president's salary was the sole income of the claimant and his wife. Since the wife's duties were unchanged, the Secretary assigned to her the amount of her former salary before the claimant's alleged retirement as the reasonable value of her services, and the remainder of her salary to the claimant as the value of his services to the corporation. Because the claimant's salary then exceeded the exempt amount under the Act, the Secretary denied him retirement benefits.

Concluding that the Secretary has the authority to examine substance over form of business transactions and relationships under the Act, the Sixth Circuit established the following factors for analyzing and penetrating the superficialities of unrepresentative family salary arrangements:

(1) Whether the claimant continues to contribute substantial and valuable services to the corporation;

(2) Whether the family member receiving the income increases his or her duties commensurate with the increase in salary; and

(3) Whether the family member's income is used to support the claimant. *Id.; see also Gardner v. Hall*, 366 F.2d 132, 135 (10th Cir.1966) ("The Secretary has, without question, the authority and the duty to pierce any fictitious arrangements among family members, and others, to shift salary payments from one to the other when the arrangement is not in accord with reality."); *Dondero v. Celebrezze*, 312 F.2d 677, 678 (2d Cir.1963) (per curiam) (The denial of the husband-claimant's retirement benefits was upheld upon the facts that claimant, the principal and only paid employee of a corporation that operated from his residence, placed his wife on the payroll after his alleged retirement, although her secretarial services did not change materially and the claimant "at all times remained the 'moving force,' " The Second Circuit affirmed that the record established a " 'scheme of shifting wages' whereby plaintiff indirectly received 'remuneration which is, in effect, wages to him.' "); *Newman v. Celebrezze*, 310 F.2d 780, 781 (2d Cir.1962) (per curiam) ("While we recognize that plaintiff had the right to choose to retire and receive his old-age benefits irrespective of any dividend or other non-wage payments he might receive, the record supports the inference that the payments nominally made to his son constituted a mere device to mask services actually rendered and compensation received by plaintiff.").

Applying these factors to this case, we find that Martin continued to manage and control the corporation after his alleged retirement. His wife did not incur more responsibilities commensurate with her increased salary, and her knowledge of corporate business gave no indication of her actual assumption of the corporate presidency other than nominally. Pursuant to their joint tax reporting following Martin's retirement, Mrs. Martin's salary was used as family income to support Martin. This case presents a blatant example of fictitious family salary arrangements. *Cf. Taubenfeld v. Bowen*, 685 F.Supp. 237, 240 (S.D.Fla.1988) (This case was remanded to the Secretary for further proceedings because there was no finding that the wages of family members were not commensurate with their alleged increased duties and the record did not show that the claimant was supported by these family members' increased income. Furthermore, there was no basis for the Secretary's allocating undistributed corporate funds to the claimant.).

Under the Act, the applicable regulations, and the test adopted herein, we conclude that the Secretary was correct in the legal determination that Martin was not retired on January 1, 1985, and that he was ineligible for Social Security benefits because his corporate earnings were in excess of the allowable statutory exempt amount.

[16] See also *Carlson* v. *Richardson*, 331 F. Supp. 1000, 1002 (D. Conn. 1971) ("To defeat his claim, the hearing examiner was not required to find affirmatively that Carlson did in fact receive earnings of such a character and amount, but only that Carlson had failed to sustain his burden of proving that he had not. The inquiry here is whether there is substantial evidence on the record to support the hearing examiner's finding that Carlson's proof of his own eligibility was lacking.").

Under the Act, the district court had "power to enter, upon the pleadings and transcript of the record, a judgment affirming * * * the decision of the Secretary, with or without remanding the cause for rehearing." 42 U.S.C. 405(g). Since we agree with the district court's determination that substantial evidence supports the Secretary's factual findings and that the legal conclusions are accurate, we AFFIRM the judgement of the district court.

[FR Doc. 91-2661 Filed 2-4-91; 8:45 am]
BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-00-4212-14; CA 27350]

Noncompetitive Sale of Public Land in Shasta County, CA

AGENCY: United States Department of the Interior, Bureau of Land Management.

ACTION: Notice of realty action; noncompetitive sale of public land in Shasta County, California.

SUMMARY: The following public lands in Shasta County, California have been examined and found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), to the County of Shasta, at not less than the fair market value.

Mount Diablo Meridian

T. 30 N., R. 6 W.,
Section 4: Lot 1 and 2 of the NE¼, N½ NW¼SE¼, S½SW¼SE¼, E½SE¼.
Containing 280.03 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. The County of Shasta proposes to use the land for a buffer zone around the existing West Central Landfill and for future expansion of the landfill. The mineral interests will be conveyed simultaneously at the time of patenting.

The patent, when issued, would be subject to the following terms, conditions, and reservations:

Excepting and Reserving to the United States

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945)

and subject to

1. A right-of-way to Pacific Gas and Electric for a powerline (CA 24929).
2. A right-of-way to Happy Valley Telephone Company for a buried telephone cable (CA 26611).

ADDRESSES: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

DATES: For a period of 45 days from the date of publication of this notice, interested persons may submit comments to the Area Manager, Redding Resource Area, at the above address.

FOR FURTHER INFORMATION CONTACT: Ilene Emry, Realty Specialist, at the above address.

Dated: January 17, 1991.
Mark T. Morse,
Area Manager.

[FR Doc. 91-2657 Filed 2-4-91; 8:45 am]
BILLING CODE 4310-40-M

[NV-930-91-4214-11; Nev-016774]

Proposed Modification of Withdrawal; Nevada

January 25, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that a withdrawal order affecting lands within the Humboldt and Toiyabe National Forests for nine administrative and recreation sites be modified to establish a 40-year term. The lands affected by the modification will remain closed to surface entry and mining. All the lands have been and will remain open to mineral leasing.

DATES: Comments should be received by May 6, 1991.

ADDRESSES: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-785-6526.

The U.S. Forest Service proposes that nine sites comprising 191.68 acres of the existing land withdrawal made by Public Land Order No. 1355 dated November 5, 1956, be modified to continue for a period of 40 years pursuant to Section 204(l) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are described as follows:

Mount Diablo Meridian, Nevada

Currant Creek Recreation Area

T. 11 N., R. 59 E.,
Sec. 16, SW¼NW¼ SW¼NW¼.

White River Recreation Area (Previously known as White River Recreation Area No. 3)

T. 13 N., R. 59 E.,
Sec. 33, SE¼NW¼NW¼SE¼, NE¼SW¼ NW¼SE¼.

Ellison Administrative Site

T. 14 N., R. 59 E.,
Sec. 28, NW¼SW¼SW¼SE¼.

Ward Mountain Recreation Area

T. 16 N., R. 62 E.,
Sec. 35, SE¼NW¼NW¼, NE¼NE¼SW¼ NW¼, NW¼SE¼NW¼.

Boy Scout Organization Camp Recreation Area

T. 16 N., R. 65 E.,
Sec. 7, Lot 4.

Berry Creek Administrative Site (conformed to current maps and the official protraction diagram)

T. 17 N., R. 65 E., (Unsurveyed)
Sec. 4, E½W¼NW¼SW¼, W½SE¼ NW¼SW¼.

Timber Creek Recreation Area (conformed to current maps and the official protraction diagram)

T. 18 N., R. 65 E., (Unsurveyed)
Sec. 26, S½NW¼SW¼NE¼, N½S½S½ NE¼, N½S½SE¼SE¼NE¼, S½S½ SE¼NW¼NW¼, N½NE¼SW¼NW¼, N½S½NE¼SW¼NW¼, S½NE¼SE¼ NW¼, NW¼SE¼NW¼, N½N½SE¼ SE¼NW¼.

East Creek Recreation Area (conformed to current maps and the official protraction diagram)

T. 19 N., R. 65 E., (Unsurveyed)
Sec. 22, N½NW¼SE¼SW¼.

Bird Creek Recreation Area

T. 18 N., R. 65 E., (Unsurveyed)
Sec. 3, N½N½NE¼NW¼.
T. 19 N., R. 65 E., (Unsurveyed)
Sec. 33, SE¼SE¼SE¼;
Sec. 34, S½S½SE¼SW¼, S½SW¼SW¼.

The areas described aggregate 191.68 acres in Nye and White Pine Counties. The withdrawal was originally established for the purpose of protecting the administrative and recreational sites. The land proposed for continuation is currently used for the purposes for which it was withdrawn. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the above proposal may present their views in writing to the

Chief, Branch of Lands and Minerals Operations, in the Nevada State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified, and if so, for how long. The final determination on the proposed action will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 91–2656 Filed 2–4–91; 8:45 am]

BILLING CODE 4310–HC–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31729]

Colorado-Denver/Warehouse Delivery, Inc.—Exemption of Highway TOFC Service From Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption; Correction.

SUMMARY: In a notice of exemption published on January 25, 1991 at 56 FR 2947, the Commission exempted from economic regulation Colorado-Denver/Warehouse Delivery, Inc.'s pickup and delivery services in Colorado and Utah, in connection with trailer-on-flatcar movements provided by rail carrier over the Rocky Mountains. This notice corrects the due dates for that proceeding. All other information stated in that notice is correct.

DATES: Provided no timely filed comments have been received, this exemption will be effective on February 24, 1991. Petitions to stay must be filed by February 4, 1991, and comments on reconsideration must be filed by February 14, 1991.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–2682 Filed 2–4–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–12 (Sub-No. 134X)]

Southern Pacific Transportation Company—Abandonment Exemption—In Tyler, Hardin, and Jefferson Counties, TX

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 36.72-mile line of railroad between milepost 76.85, near Hillister, and milepost 40.126, near Loeb Jct., in Tyler, Hardin, and Jefferson Counties, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 16, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 25, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 6, 1991, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Gary A. Laakso, Southern Pacific Transportation Company, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 19, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 30, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–2683 Filed 2–4–91; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers United States City Average

Pursuant to Section 604(c) of the Motor Vehicle Information and Cost Savings Act, which was added to the Motor Vehicle Theft Law Enforcement Act of 1984, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the National Highway Traffic Safety Administration (49 CFR 501.2(f)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index

for All Urban Consumers (1967=100) increased 25.8 percent from its 1984 base period annual average of 311.1 to its 1990 annual average of 391.4.

Signed at Washington, DC, on the 24th day of January 1991.

Roderick A. DeArment,

Acting Secretary of Labor.

[FR Doc. 91-2602 Filed 2-4-91; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 15, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 15, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of January 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ACI-Standard (workers)	Steubenville, OH	01/22/91	01/10/91	25,306	Brushes.
Aluminum Cruisers, Inc.	Louisville, KY	01/22/91	01/08/91	25,307	Aluminum.
Bivouac Automotive Corp. (workers)	Vandalia, MI	01/22/91	12/20/90	25,308	Vans.
Bojud Knitting Mills (workers)	Amsterdam, NY	01/22/91	01/08/91	25,309	Fabric.
Cagle Oilfield Services, Inc. (workers)	Tulsa, OK	01/22/91	12/31/90	25,310	Oil & Gas.
California Mfg., Co. (workers)	St. James, MO	01/22/91	01/07/91	25,311	Jackets.
Consolidated Oilfield Rentals, Inc. (workers)	Clinton, OK	01/22/91	01/03/91	25,312	Oil & Gas.
Denman Tire Corp. (URW)	Warren, OH	01/22/91	01/07/91	25,313	Tires.
Electronic Interconn.Sys./Fleck (workers)	Nogales, AZ	01/22/91	01/08/90	25,314	Wires.
Energy Fuels Nuclear, Inc. (Company)	Fredonia, AZ	01/22/91	01/07/91	25,315	Uranium.
Fulton Garment Co. (workers)	Fulton, KY	01/22/91	12/27/90	25,316	Military Uniforms.
G. Heileman Brewing Co., Inc. (workers)	Frankenmuth, MI	01/22/91	12/27/90	25,317	Beer & Malt Beverages.
General Electric Co. (GESD)	Syracuse, NY	01/22/91	01/08/91	25,318	Components.
Lindberg (Boilermakers)	Chicago, IL	01/22/91	01/14/91	25,319	Furnaces & Parts.
Master Inc. Materials Hastings (workers)	Hastings, MN	01/22/91	01/08/91	25,320	Sheepskin.
Nate's Red Gold (workers)	Hoquiam, WA	01/22/91	12/28/90	25,321	Shakes & Shingles.
Ozalid Corp. (IAMAW)	Binghamton, NY	01/22/91	12/31/90	25,322	Copy Machines.
Pea Ridge Iron Ore Co. (workers)	Sullivan, MO	01/22/91	12/30/90	25,323	Iron.
Philips Consumer Products Electronics (workers).	E. Rutherford, NJ	01/22/91	01/07/91	25,324	Electronic.
Potlatch Corp. (IWA)	Lewiston, ID	01/22/91	01/09/91	25,325	Lumber.
Seattle Steel, Inc. (USWA)	Seattle, WA	01/22/91	01/07/91	25,326	Steel.
Sensus Technologies, Inc. (USWA)	Uniontown, PA	01/22/91	01/09/91	25,327	Water Meters.
Target Products, Inc. (workers)	LeRoy, NY	01/22/91	01/08/91	25,328	Drills & Blades.
Trilogy Communications, Inc. (workers)	Freehold, NJ	01/22/91	01/02/91	25,329	Coaxial Cables.
Unisys (workers)	Flemington, NJ	01/22/91	01/04/91	25,330	Computers.
Van Dorn Co. (UAW)	Cleveland, OH	01/22/91	01/02/91	25,331	Molding Machines.
W.R. Grace (ICWU)	Acton, MA	01/22/91	12/28/90	25,332	Battery Separaters.
Weather Tamer, Inc. (workers)	Athens, AL	01/22/91	01/07/91	25,333	Jackets.
Wheaton Glass Co. (GMP)	Millville, NJ	01/22/91	01/07/91	25,334	Bottles.

[FR Doc. 91-2604 Filed 2-4-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,130]

Cytemp Specialty Steel Co., Lawrenceville, PA; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 3, 1990 in response to a worker petition which was filed on behalf of workers at Cytmpt Specialty Steel Company, Lawrenceville, Pennsylvania.

A negative determination applicable to the petitioning group of workers was issued on December 21, 1990 (TA-W-25,027). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-2603 Filed 2-4-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,027]

Cytemp Specialty Steel Division Pittsburgh, PA Investigations Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the City location previously published in the **Federal Register** on November 28, 1990, (55 FR 49441) in FR Document 90-27913 indicating Pittsburgh, Pennsylvania as the location of Cytemp Specialty Steel Division.

Under the appendix Table, TA-W-25,027; Cytemp Specialty Steel Division, the location should be Lawrenceville, Pennsylvania instead of Pittsburgh, Pennsylvania. Signed at Washington, DC this 24th day of January 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-2605 Filed 2-4-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,050]

Ringling Manufacturing Co., Ringling, OK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 5, 1990 in response to a worker petition which was filed on behalf of workers at Ringling Manufacturing Company, Ringling, Oklahoma.

An active certification covering the petitioning group of workers at the subject firm remains in effect (TA-W-24,912). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 28th day of January 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-2600 Filed 2-4-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with acticles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,960; Spinnerin Yarn Co., Inc., South Hackensack, NJ

TA-W-25,026; Custom Bilt Machinery Co., York, PA

TA-W-24,892; Advanced Input Devices, Priest River, ID

TA-W-25,091; EPG Industries, Inc., Muskegon, MI

TA-W-25,078; Private Label Enterprises Corp., Kearny, NJ

TA-W-24,973; Kellwood Co., Clinton, OK

TA-W-25,112; Columbia Manufacturing Co., Westfield, MA

TA-W-25,149; Sedro Woolley Lumber, Sedro Woolley, WA

TA-W-24,893; A.G. Belt Co., New York, NY

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,068; Fairfield Jersey, Inc., Paterson, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,162; Excalibur Automobile Corp., Milwaukee, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,087; Brockway, Inc., Montgomery, AL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,036; Isotronics, Inc., New Bedford, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,108; Wright & McGill Co., Denver, CO

Aggregate imports of products like or directly competitive with fishhooks did not increase during the period under investigation.

TA-W-25,049; R&J Janitorial & Maintenance Supply Co., Salem, VA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,101; Philips Components Discrete Products Div., Slatersville, RI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,101A; Philips Components, Discrete Products Div., Smithfield, RI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,119; McMoran Oil & Gas Co., New Orleans, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,077; Paterson Laundry & Dye Work, Paterson, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,103; Port of Galveston, Galveston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,111; Calterm, Inc., Hillsdale, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,086; A.C. Nielsen Co., El Paso, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,066; Date Card Addressograph, Holmesville, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,120; Molycorp, Inc., Washington, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25,071; Karg Brothers, Inc., Johnstown, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–24,851; Joseph Love, Inc., New York, NY

A certification was issued covering all workers separated on or after September 6, 1989.

TA–W–24,852; Joseph Love, Inc., College Point, NY

A certification was issued covering all workers separated on or after September 6, 1989.

TA–W–24,937; High Q Manufacturing Co., Fennville, MI

A certification was issued covering all workers separated on or after August 1, 1990.

TA–W–24,912; Ringling Manufacturing Co., Ringling, OK

A certification was issued covering all workers separated on or after September 17, 1989 and before April 30, 1990.

TA–W–24,994; Bernat Yarn & Craft Corp., Uxbridge, MA

A certification was issued covering all workers separated on or after August 30, 1989.

TA–W–25,122; Sanyo Audio Manufacturing (USA) Corp., Milroy, PA

A certification was issued covering all workers separated on or after November 16, 1989.

TA–W–25,196; Arthur Bartfeld, Inc., New York, NY

A certification was issued covering all workers separated on or after November 30, 1989.

TA–W–25,072; Kelmark, Inc., South River, NJ

A certification was issued covering all workers separated on or after October 31, 1989 and before July 31, 1990.

TA–W–24,894; Airpax, Inc., Cambridge, MD

A certification was issued covering all workers separated on or after September 19, 1989.

TA–W–24,899; Candice Fashions, Haleyville, AL

A certification was issued covering all workers separated on or after September 25, 1989.

TA–W–24,930; TRW, Inc., Knoxville, TN

A certification was issued covering all workers separated on or after September 1, 1989.

TA–W–25,074; Made Well Dress Co., Orange, NJ

A certification was issued covering all workers separated on or after November 1, 1989.

I hereby certify that the aforementioned determinations were issued during the month of January, 1991. Copies of these determinations are available for inspection, in room C4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washignton, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 28, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–2598 Filed 2–4–91; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[Docket No. NRTL–2–88]

Dash, Straus and Goodhue, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of expansion of current recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the Dash, Straus and Goodhue, Inc. application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Dash, Straus and Goodhue, Inc. (DS&G), previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35763), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 50603, 12/16/88), and was so recognized (see 54 FR 25643, 6/16/89).

DS&G subsequently applied for expansion of its current recognition, as a Nationally Recognized Testing Laboratory pursuant to 29 CFR 1910.7. (See Exhibit 9.) A notice of DS&G's application together with a positive preliminary finding was published in the **Federal Register** on December 7, 1990 (55 FR 50623–24). (See Exhibit 11.) There were no responses to this **Federal Register** notice.

Notice is hereby given that DS&G's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL–2–88), are available for inspection and duplication at the Docket Office, room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210.

The address of the concerned laboratory is:

Dash, Straus and Goodhue, Inc., 593 Massachusetts Avenue, Boxborough, Massachusetts 01719.

Final Decision and Order

Based upon the facts found as part of the Dash, Straus and Goodhue, Inc. original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of the staff, the application and documentation submitted by the applicant (see Exhibit 10A), the OSHA staff finding including the original On-Site Review Report, as well as the evaluation of the current request (see Exhibit 10B), OSHA finds that Dash, Straus and Goodhue, Inc. has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Dash, Straus and Goodhue, Inc. recognition is hereby expanded to include the two additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following two additional test standards for the testing and certification of equipment or

materials included within the scope of these standards.

DS&G has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

UL 1224—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1262—Laboratory Equipment

Dash, Straus and Goodhue, Inc. must also abide by the following conditions of this expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to DS&G's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If DS&G has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

DS&G shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, DS&G agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

DS&G shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

DS&G will continue to meet the requirements for recognition in all areas where it has been recognized; and

DS&G will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATES: This recognition will become effective on February 5, 1991, and will be valid for a period of five years from the date of the original recognition, June 16, 1989, until June 16, 1994, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 30th day of January, 1991.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91-2601 Filed 2-4-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Site Visits

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of site visits.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces forthcoming site visits of the Commission.

DATES AND PLACES: Monday, February 25, 1991 and Tuesday, February 26, 1991—Tucson, Arizona; Wednesday, February 27, 1991 and Thursday, February 28, 1991—Oklahoma; Wednesday, February 27, 1991 and Thursday, February 28, 1991—St. Paul-Minneapolis, Minnesota.

TYPE OF EVENT: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., suite 815, Washington, DC 20006 (202) 254-5125. The Commission's TTY number is (202) 254-3816. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

ITINERARY: Commissioners will conduct three separate and independent site visits to Native American communities to gain a better understanding of the impact of the HIV epidemic on these communities.

Dated: January 31, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91-2668 Filed 2-4-91; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting

AGENCY: The National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: February 13, 1991, 10 a.m. to 3:30 p.m.

ADDRESSES: Capitol Hill Hotel, Capitol Hill Room, 200 C Street SE., Washington, DC 20003.

FOR FURTHER INFORMATON CONTACT: Jeff Lawrence, Staff Assistant to Chairman, The National Commission on Severely Distressed Public Housing, 2301 Rayburn Building, Washington, DC 20515, (202) 225-2436.

TYPE OF MEETING: Open.

AGENDA: Election, Approval of Charter and Memorandum of Understanding, Discussion of Meeting Schedule, Approval of Budget and Staffing, Discussion of Goals of the Commission.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Bill Green,

Acting Chairman.

[FR Doc. 91-2660 filed 2-4-91; 8:45 am]

BILLING CODE 6820-04-M

NUCLEAR REGULATORY COMMISSION

Proposed Availability of FY91 Funds for Financial Assistance (Cooperative Agreements) To Support Research at Historically Black Colleges and Universities and the Exchange of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research, and Office of Small and Disadvantaged Business Utilization and Civil Rights, announced proposed availability of Fiscal Year (FY) 91 funds to initiate a financial assistance program for Historically Black Colleges and Universities (HBCUs). The FY91 ceiling for the program is $150,000 which will be administered in accordance with the Federal Grant and Cooperative Agreement Act of 1977. Because of the limited sum, HBCUs should restrict proposed research cooperative agreement budget to no more than $50,000 per year, with total project

funding not exceeding $100,000 over a two-year period. Proposals for FY91 research cooperative agreements should be submitted between the date of this notice and April 19, 1991. Proposals received after April 19, 1991 may or may not be considered for funding in FY91, which ends September 30, 1991.

ADDRESS: Attention: Grants Officer, Division of Contracts and Property Management, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mrs. Kimberly Parrott, (301) 492–4297.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1989, the Executive Office of the President published in the Federal Register (54 FR 18869) Executive Order 12677 of April 28, 1989, informing each Executive Department and those Executive agencies designated by the Secretary of Education to establish an annual plan to increase the ability of HBCUs to participate in federally sponsored programs. On September 1, 1989, the NRC FY90 Federal Plan for Assistance was submitted to the Executive Director of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education. On October 27, 1989, the White Hosue Initiative approved the financial assistance for HBCUs as part of the NRC Federal Plan which described specific strategies for involving HBCUs in NRC research activities.

Scope and Purpose of This Announcement

Pursuant to Executive Order 12677 of April 28, 1989, and the NRC Federal Plan, the NRC Office of Nuclear Regulatory Research and the Office of Small and Disadvantaged Business Utilization and Civil Rights has a limited amount of funds (FY91 ceiling of $150,000) to support research cooperative agreements to HBCUs.

The proposed HBCU research cooperative agreement program is part of a larger NRC effort to increase university involvement in nuclear safety research, and in direct response to Executive Order 12677, directing Federal agencies to find ways to increase participation of HBCUs in the programs of the Federal Government. In addition, the proposed research program takes advantage of the strong interest of HBCU institutions in increasing student involvement in research activities.

The purpose of this program is to stimulate research at HBCUs in the area of nuclear safety using cooperative agreements to reduce the financial and personnel burden to the institutions of initiating the research activity. Each research cooperative agreement should contain elements which will potentially benefit the undergraduate and graduate research programs of the institution, as well as show creativity in attracting support from the private sector to extend or expand the research activity.

The results of this program will—

a. Broaden public understanding relating to nuclear safety;
b. Pool the funds of theoretical and practical knowledge and technical information;
c. Enhance protection of the public health and safety;
d. Advance the development of human potential;
e. Strengthen the capacity to provide quality education; and
f. Ensure the long-term viability of HBCU institutions.

The NRC encourages HBCUs to submit research cooperative agreement proposals in the following areas:

1. Development of steady state and transient pump models for estimate code applications.

2. Advantages and disadvantages of cooling water addition to a degraded core.

3. Behavior of hot hydrogen while exiting a break in the primary pressure boundary.

4. Modeling and experimentation on two-phase flow, interfacial relations, and heat transfer in nuclear reactor coolant systems.

5. Evaluation of severe accident phenomena including: High temperature chemistry of fission product and reactor fuel and structural materials, advanced modeling of the behavior of fluids, combustible gases and molten core materials in reactor primary systems during severe accidents.

6. Advanced demographic models or statistical methods to predict population density and distribution around future power reactor sites.

7. Interaction of reactor materials at very high temperature (e.g., core/concrete, core debris/vessel component interactions).

8. Evaluation of the risk reduction effectiveness of human factors requirements in nuclear powerplant operations and maintenance.

9. Methods for applying the growing pool of human performance data to nuclear powerplant safety requirements.

10. Development of methods for Risk and Reliability Analysis of closed loop control systems, including advanced digital based control systems.

11. Develop and codify pragmatic, statistically valid, methods for updating severe accident, frequency and consequence analysis to reflect results of new operational, experimental, and calculation data.

12. Develop merit of methods and procedures for establishing the degree to which Probabilistic Risk Assessment (PRA) results converge with operational data.

13. Development of methods to analyze and understand the aging effects, including irradiation damage effects, improved examination and testing methods for determining the condition of structures and components and methods to assess residual lifetime of structures and components.

14. Development of nondestructive testing methods for in-situ evaluation of material properties and property degradation due to aging, such as fracture toughness and fatigue.

15. Development of methods for assuring component structural reliability and realistic methods to define the probabilities of radioactive release due to earthquakes.

16. Development of methods for assuring integrity of the primary system, i.e., pressure vessels, piping, steam generator tubing, such as advanced nondestructive testing techniques, continuous monitoring techniques and fracture analysis procedures.

17. Development of methods to establish and validate decommissioning criteria and effects of water chemistry on the primary system integrity.

18. Development and/or validation of models to explain the techtonics of the Central and Eastern United States (east of 106 degrees W.)

19. Development and/or validation of models to predict the propagation of seismic ground motions in the Central and Eastern States or in a shallow soil column.

20. Investigations/studies including field observations of the paleoseismicity of the Central and Eastern United States.

21. Development of rapid bioassay analysis techniques for application to accidental internal exposure situation.

22. Natural analog studies of long-term stability of waste forms for low-and high-level nuclear waste.

23. Studies of volcanism in the Basin and Range.

24. Simplified modeling of thermohydrologic phenomena in high-level waste geological repositories.

25. Investigations of coupled tectonic-hydrological processes.

26. Development of a continuum approach for modeling unsaturated fractured rock.

27. Development of improved instrumentation or techniques for measuring activities, radiation dose, and dose rates, especially from small radioactive particles.

28. Development of methods for contamination prevention, measurement, and control; and improved radiological air sampling methodology.

29. Investigation of the types, sensitivity, and linearity of various biological effects of radiation that could be used as biological dosimeters.

30. Research on the metabolism of radionuclides and their compounds relative to the calculation of internal dose.

31. Investigation of the efficacy of agents to protect against radioactivity.

Eligible Applicants

Historical Black Colleges and Universities are eligible to apply for a cooperative agreement under this announcement.

Factors Generally Indicating Support Through Cooperative Agreements

The NRC's benefit from the results of Cooperative Agreements should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of work performed. Surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities will not be funded by a Cooperative Agreement. Applicants requesting support for work which has a direct regulatory application should submit their requests as an unsolicited proposal for consideration as a contract rather than a Cooperative Agreement.

1. The primary purposes of NRC Cooperative Agreements is to support the development of knowledge or understanding of the subject or phenomena under study.

2. The exact course of the work and its outcome are usually not defined precisely, and specific points in time for achievement of significant results do not need to be specified.

3. The NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.

4. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) may be prepared only as new findings are made, rather than on a predetermined time schedule.

5. Simplicity and economy in execution and administration are mutually desirable.

Proposal Format

Proposals should be concise and provide a thorough understanding of the proposed project. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

HBCUs shall submit proposals utilizing the standard forms stipulated in OMB Circular A-110, (Attachment M).

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. *Cover page.* The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "research," "study," or other similar designation to assist in the identification of the project;
Names of Principal Researchers or Participants;
Total Cost of Proposal; (Identity Cost by Fiscal Year)
Period of Proposal;
Organization or Institution and Department;
Required Signatures;
Principal Participants;
Name:
Address:
Telephone No:
Required Organization Approval:
Name:
Date:
Address:
Telephone No:
Organization Financial Officer:
Name:
Date:
Address:
Telephone No:

2. *Project description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding. Applicants must identify other possible sources of financial support for a particular project, and list those sources from which financial support has been or will be requested.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for project description:

(a) *Project goals and objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project outline.* The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) Project benefits. The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will acrue.

(d) *Project participants and facilities.* The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project costs.* As education institutions, HBCUs shall adhere to the cost principles set forth in OMB Circular A-21.

The proposal must provide a detailed schedule of projects costs, identifying in particular—

(1) Salaries—in proportion to the time of effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees; (Note: Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.)

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) *Supporting/Documentation.* The supporting documentation should contain any additional information that will strengthen the proposal.

Proposal Subsmission and Deadline

The notice is valid for part of the Federal Government Fiscal Year 91 (March 30, 1991 to September 30, 1991). Potential cooperators are advised that due to the limited funding available, proposals received after April 19, 1991 may or not be considered for funding in Fiscal Year 91.

FY91 Funds

For Fiscal Year 91, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, anticipates making a total of $150,000 available for funding research Cooperative Agreements to HBCU institutions. Because of the limited funds proposed Cooperative Agreement budgets should be restricted to no more than about $50,000 per year, with total

project funding not exceeding $100,000 over a period of two years.

Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

Evaluation Criteria

The award of NRC Cooperative Agreements is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for research projects will employ the following criteria. No level of importance is implied by the order in which these criteria are listed.

1. Adequacy of the research design.
2. Scientific significance of proposal.
3. Technical adequacy of the investigators and their institutional base.
4. Relevance to a research area(s) described above.
5. Reasonableness of estimated cost in relation to the work to be performed and anticipated result.
6. Potential benefit of the project to the overall benefit of the institution's undergraduate and graduate research program.

Disposition of Proposals

Notification of award will be made by the Grants (Cooperative Agreement) Officer and organizations whose proposals are unsuccessful will be so advised.

Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Contract Negotiation Branch No. 2, Division of Contracts and Property Management, Mail Stop P-1042, Office of Administration, Washington, DC 20555. (Note: Cooperative Agreement Application packages. Standard Form 424 must be requested in writing).

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Contract Negotiation Branch No. 2, Division of Contracts and Property Management, Office of Administration, Mail Stop P-1042, 7920 Norfolk Avenue, Bethesda, MD 20814.

Note: Upon delivery of the application to the NRC guard desk (at the above address), the guard should be requested to telephone the Division of Contracts and Property Management (Extension 24297) for a pick-up of the application.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Bethesda, MD this 30th day of January 1991.

For the U.S. Nuclear Regulatory Commission.

Elois J. Wiggins,

Acting Chief, Contract Negotiations Branch No. 2, Division of Contracts and Property Management, Office of Administration.

[FR Doc. 91-2675 Filed 2-4-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528-OLA, 50-529-OLA and 50-530-OLA (Shutdown Cooling Flowrate); ASLBP No. 91-632-04-OLA]

Arizona Public Service Company, et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Unit Nos. 1, 2 and 3; Facility Operating License Nos. NPF-41, NPF-51 and NPF-74

This Board is being established pursuant to a notice published by the Commission on December 21, 1990 in the **Federal Register** (55 FR 52337) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendment would revise the technical specifications relating to the minimum required shutdown cooling flowrate. The amendment would reduce the required flowrate from 4000 gpm to 3780 gpm to provide additional margin for preventing air entrainment while the reactor coolant system is partially drained.

The Board is comprised of the following administrative judges:

Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frank F. Hooper, 26993 McLaughlin Boulevard, Bonita Springs, FL 33923.

Peter A. Morris, 10825 South Glen Road, Potomac, MD 20854.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 29th day of January 1991.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-2676 Filed 2-4-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528-OLA-2, 50-529-OLA-2 and 50-530-OLA-2 (Allowable Setpoint Tolerance); ASLBP No. 91-633-05-OLA-2]

Arizona Public Service Company, et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Unit Nos. 1, 2 and 3; Facility Operating License Nos. NPF-41, NPF-51 and NPF-74

This Board is being established pursuant to a notice published by the Commission on December 27, 1990 in the **Federal Register** (55 FR 53220) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing." The proposed amendments would increase the allowable setpoint tolerance for the pressurizer safety valves from 2500 psia plus or minus 1 percent to 2500 psia plus 3 percent or minus 1 percent; increase the allowable setpoint tolerance for the main steam safety valves from 1250 psig and 1315 psig plus or minus 1 percent to the same settings plus or minus 3 percent; reduce the minimum required feedwater flow from 750 gpm to 650 gpm; and reduce the response time for the high pressurizer pressure reactor trip from 1.15 seconds to 0.5 seconds.

The Board is comprised of the following administrative judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S.

Nuclear Regulatory Commission, Washington, DC 20555.
Walter H. Jordan, 881 W. Outer Drive, Oak Ridge, TN, 37830.
Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 29th day of January 1991.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-2677 Filed 2-4-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corporation; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-43, issued to Wisconsin Public Service Corporation (WPSC) (the licensee), for operation of the Kewaunee Nuclear Power Plant located in Kewaunee, Wisconsin.

The amendment would delete Technical Specification (TS) 5.3.a.6 to allow for the receipt of new neutron flux detectors at the Kewaunee Nuclear Power Plant. In WPSC's response to NRC Regulatory Guide 1.97, a commitment was made to install new flux detectors during the 1991 refueling outage.

The need for this exigent change could not be avoided because the conflict with Technical Specification 5.3.a.6 was not discovered until the second level review of the design change to install the flux detectors was performed. That review was completed January 24, 1991. The NRR Project Manager for KNPP was promptly notified of this conflict and preparation of this exigent TS amendment request began immediately thereafter.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has provided the following no significant hazards consideration determinations as required by 10 CFR 50.91(a):

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The amount of fissionable material in the detectors is insigificant when compared to the entire core, and therefore will not introduce additional criticality concerns. Also, the fissionable material used in neutron flux detector in inside the sealed detector chamber and therefore inaccessible. An increase in the amount of fissionable material inside sealed flux detectors will not change the purpose or function of the detector as it is used for monitoring plant operations and therefore would not affect any accident analysis performed.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The amount of fissionable material in a detector is negligible when compared to the amounts considered in design basis accidents. Also, fissionable material in a detector is stored within a sealed chamber. Changing the amount of fissionable material in sealed flux detectors would not physically alter any plant configrations, setpoints, operating parameters, or plant performance.

(3) The proposed change does not involve a significant reduction in a margin of safety. Fissionable material sealed inside a flux detector is considered a sealed source as defined by 10 CFR 70.4. This material is therefore inaccessible. It does not affect any plant systems since it is internal to the detectors. The limits and controls for special nuclear material of moderate strategic significance will subsequently be limited by, and controlled in accordance with 10 CFR parts 30, 40 and 70. This will ensure that adequate control and accounting procedures will be implemented when required. Increasing the amount of fissionable material inside a flux detector and on site, within the limits of the operating license, will not reduce the margin of safety at KNPP.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice.

Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 7, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 34301. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves a no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to David Baker, Esq., Foley and Lardner, Post Office Box 2193, Orlando, Florida 31082, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment date January 28, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555, and at the local public document room located at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 31st day of January 1991.

For the Nuclear Regulatory Commission.

Michael J. Davis,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–2678 Filed 2–4–91; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (Board) authority under section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board's Panel on Structural Geology & Geoengineering will hold a meeting in Tucson, Arizona, on Friday, March 1, 1991. Representatives from the Department of Eenrgy (DOE), the Electric Power Research Institute (EPRI), and the State of Nevada will make presentations on their recent studies relating to volcanic hazards at Yucca Mountain, Nevada, the site proposed for location of a high-level waste repository. The meeting will run from 8 a.m.–5 p.m. For confirmation of the exact location, please contact the NWTRB Office of External Affairs, (703) 235–4473.

Specific topics to be covered at the meeting will include past volcanism in the vicinity of Yucca Mountain, Nevada; probabilistic estimates of volcanic hazards at the proposed repository site; and analyses of the proposed site's vulnerabilities to volcanic events.

Members of the public are welcome to attend. Transcipts of the meeting will be available on a library-loan basis beginning March 25, 1991, from Victoria Reich, Board librarian; (703) 235–4473.

The Nuclear Waste Technical Review Board was established in the NWPAA of 1987 to evaluate the scientific and technical validity of activities undertaken by the DOE in its civilian radioactive waste management program. In the same law, Congress directed the DOE to characterize the site at Yucca Mountain, Nevada, for the possible development of a permanent underground repository for spent fuel and defense high-level waste.

For further information on the location of the meeting, contact Karyn Severson, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: January 31, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91–2684 Filed 2–4–91; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549

Extension

Form 2–E, File No. 270–222
Form 13F, File No. 270–22
Form N–8F, File No. 270–136
Form N–17D–1, File No. 270–231
Form N–23C–1, File No. 270–230
Form N–54C, File No. 270–184
Form N–54A, File No. 270–182
Form N–6F, File No. 270–185
Rule 24f–2, File No. 270–131
Rule 18f–1, File No. 270–187
Rule 17a–7, File No. 270–238
Rule 19a–1, File No. 270–240
Rule 30a–1, File No. 270–210
Rule 30b2–1, File No. 270–213
Rule 17a–8, File No. 270–225
Rule 17f–1, File No. 270–236

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Form 2–E under the Securities Act of 1933 (17 CFR 239.201) and Form 13F under the Securities Exchange Act of 1934 (17 CFR 249.325).

Form 2–E is the form that a small business investment company that has engaged in a limited offering of its securities uses to report semi-annually the progress of the offering, including the number of shares sold. Each respondent spends approximately 10 hours, annually, reporting on Form 2–E.

Form 13F is used by certain large investment managers to report quarterly with respect to certain securities over which they exercise investment discretion. Each report takes about 24.6 hours to fill out.

Notice is also given that the Securities and Exchange Commission has submitted for extension of the approval the following forms and rules under the Investment Company Act of 1940:

Form N–8F (17 CFR 274.218) is the form prescribed for use by certain registered investment companies requesting orders of the Commission declaring that they have ceased to be investment companies. The form takes about 6 hours to fill out.

Form N–17D–1 (17 CFR 274.200) is used by small business investment companies and banks affiliated therewith to report any loan, advance of credit to, or acquisition of securities or property of a small business concern or any agreement to do any of the foregoing. The annual burden of filling out the form is approximately 5 hours per response.

Form N–23C–1 (17 CFR 274.201) is a form on which closed-end investment companies report repurchases of their own securities. The form takes about 1 hour to fill out.

Form N–54C (17 CFR 274.54) is used to notify the Commission that a company withdraws its election to be regulated as a business development company. The annual burden is about 1 hour per respondent.

Form N–54A (17 CFR 274.53) is the notification of election to be regulated as a business development company. The annual burden is about .5 hours per respondent.

Form N–6F (17 CFR 274.15) permits a company that has lost its exclusion from the Investment Company Act of 1940 because it intends to make a public offering as a business development company, but is not ready to file Form N–54A, to remain exempt from that Act for up to 90 days. The form takes about .5 hours to fill out.

Rule 24f–2 (17 CFR 270.24f–2) allows certain investment companies to register their shares under the Securities Act of 1933 without specifying at the time of registration the total number of shares to be registered. Registrants spend about 1.9 hours per response.

Rule 18f–1 (17 CFR 270.18f–1) enables a registered open-end management investment company that may redeem its securities in kind to elect to commit to make limited cash redemptions without violating section 18(f) of the Investment Company Act of 1940. A response takes approximately 1 hour.

Rule 17a–7 (17 CFR 270.17a–7) requires various records to be kept in connection with certain purchase or sale transactions between registered investment companies and certain of their affiliates. Each recordkeeper spends about 1 hour, annually, meeting this requirement.

Rule 19a–1 (17 CFR 270.19a–1) requires a written statement to accompany certain dividend payments. A respondent would probably spend about .25 hours, annually, meeting this requirement.

Rule 30a–1 (17 CFR 270.30a–1) requires every registered management investment company to file a semi-annual report with the Commission. The burden of meeting the requirement of this rule is the burden of filing Form N–SAR, the reporting form prescribed under the rule. Approval for Form N–SAR has been given separately.

Rule 30b2–1 (17 CFR 270.30b2–1) requires the filing with the Commission of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its shareholders. Approval for requiring the reports, themselves, has been given separately. The burden of filing the reports is negligible.

Rule 17a–8 (17 CFR 270.17a–8) exempts certain mergers or consolidations involving investment companies from Section 17(a) of the Investment Company Act of 1940. The rule requires approximately 1.5 hours of recordkeeping per company involved in such a merger or consolidation.

Rule 17f–1 (17 CFR 270.17f–1) requires that a custodial contract and an accountant's certificate be filed with the Commission in connection with the placement or maintenance of the assets of a registered management investment company in the custody of a member of a national securities exchange. The rule requires each respondent to spend about 4 hours meeting reporting requirements, annually.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy

of the estimated average burden-hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Projects 3235-0233 (Form 2-E), 3235-006 (Form 13F), 3235-0157 (Form N-8F), 3235-0229 (Form 17D-1), 3235-0230 (Form 23C-1), 3235-0236 (Form N-54C), 3235-0237 (Form N-54A), 3235-0238 (Form N-6F), 3235-0159 (Rule 24f-2), 3235-0211 (Rule 18f-1), 3235-0214 (Rule 17a-7), 3235-0216 (Rule 19a-1), 3235-0219 (Rule 30a-1), 3235-0220 (Rule 30b2-1), 3235-0235 (Rule 17a-8), and 3235-0222 (Rule 17f-1) room 3208 NEOB, Washington, DC 20503.

Dated: January 29, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2589 Filed 2-4-91; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Revision—Rule 15c2-11, No. 270-196

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to Rule 15c2-1l (17 CFR 240.15c2-11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Rule 15c2-1l regulates the initiation or resumption of quotations in a quotation medium by a broker or dealer for over-the-counter securities. It is estimated that approximately 550 brokers and dealers would incur an estimated aggregate burden of 7,700 hours, or 14 hours per broker-dealer, to comply with the rule's proposed revisions.

The estimated burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 5th Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Act Project (3235-0196), room 3208 New Executive Office Building, Washington, DC 20503.

Dated: January 29, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2590 Filed 2-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28835; International Series Rel. No. 224; File No. SR-PSE-91-03]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Waiving Transaction Changes on Certain Index Warrants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 23, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the Schedule of Rates and Charges published by the Exchange, the PSE proposes to waive all transaction fees and charges for put warrants on the CAC-40 Index issued by Société Générale Warrants Limited N.V. ("Sgg WS") and expiring on November 4, 1992 and put warrants on the CAC-40 Index issued by Paine Webber Group, Inc. ("PWP WS") and expiring on November 9, 1993. The waiver shall cover a three-month period, beginning from January 22, 1991 through April 22, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

Although the Exchange believes that its specialists will provide excellent markets in CAC-40 Index warrants, the PSE is of the opinion that a three month waiver for certain fees and charges is necessary to remain on a competitive footing with the other exchanges. This waiver of transaction fees and charges will encourage trading decisions on the basis of the strength of the marketplace.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will increase competition and the quality of markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Since the proposed rule change concerns changing a fee or other charge imposed by the PSE, it has become effective immediately upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 29, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2646 Filed 2-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28833; File Nos. SR-Amex-90-38; SR-CBOE-90-27; SR-MSE-91-03; SR-NASD-91-02; SR-NYSE-90-51; SR-PSE-90-41; SR-PHLX-90-24)

Self-Regulatory Organizations; Filing of Proposed Rule Changes by American Stock Exchange, Inc., et al., Relating to Options Communications to Customers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively referred to as "the Self-Regulatory Organizations" or "SROs") filed, on December 27, 1990, October 24, 1990, January 9, 1991, January 8, 1991, October 22, 1990, December 3, 1990, and December 24, 1990, respectively, with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the SROs. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.[1]

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs propose to amend their rules to modify the industry publication "Guidelines for Options Communications" ("Guidelines")[2] to reflect changes in the options market and the way these changes impact communications with the public.

The full text of the proposed rule changes are available at the respective principal offices of the above-mentioned SROs and at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the SROs included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In response to the SEC's comments contained in a letter, dated June 8, 1989, from Richard G. Ketchum, Director, Division of Market Regulation ("Division"), SEC, to Donald van Weezel, Chairman of the Options Self-Regulatory Council ("OSRC Letter"),[3] the SROs have filed amendments to their uniform rules concerning options communications with customers. The OSRC Letter recommended greater uniformity and communication among the SROs in connection with the review of options advertisements, educational material, sales literature and options-related communications. The OSRC Letter also recommended that the SROs update and improve the Guidelines and provide for consistent application of the Guidelines by SROs and their member firms. Accordingly, the SROs have proposed jointly changes to the Guidelines to reflect, among other things, changes that have occurred in the options market in the last several years and address the introduction of new products. In connection with the amendments to the Guidelines, the SROs have also proposed conforming amendments to their rules governing options-related communications.

Specifically, the amendments to the SROs rules:[4] (1) Apply the advertising requirements contained in these rules to educational materials; (2) delete the requirement that options communications be in "good taste";[5] (3) clarify the term "advertisement" to include sales material that reaches a mass audience through any telecommunications device; (4) strengthen the application of the advertising requirements by replacing the word "should" with the word "shall," thus emphasizing that these requirements are mandatory; (5) allow member organizations to use standardized options worksheets for each product type;[6] and (6) allow Registered Representatives to provide in sales literature records or statistics which portray their own past performance or actual transactions instead of those of the member organization as a whole, provided it is done within the context of the requirements of the SROs' options communications rules.

The amendments to the Guidelines, in addition to incorporating the above-mentioned changes to the SROs' rules, add language to explain the significance

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[1] Although the Commission is reviewing the NASD's proposal, it will await NASD membership approval before taking any action on it. See File No. SR-NASD-91-02.

[2] The Guidelines are an industry-wide publication produced jointly by all the SROs, and are distributed to all member firms. It is designed to amplify the standards contained in the SROs' options communications rules and thereby assist member firms in maintaining proper standards in their preparation of communications with the public. The Guidelines, however, have not been amended since their initial publication in 1980.

[3] Pursuant to rule 17d-2 under the Act, the SROs reached an agreement to allocate options regulatory responsibilities for common members. As part of this agreement, the SROs formed the OSRC which is comprised of one representative of each SRO participating in the agreement. The SROs are all members of the OSRC.

[4] The SROs propose to amend the following rules: Amex Rule 991; CBOE Rule 9.21; MSE Rule 4, Article XIII; Article III, Section 35 of the NASD Rules; NYSE Rule 791; PSE Rule VI, Sec. 35; Phlx Rule 1049.

[5] Because of objective standards, deletion of the "good taste" test does not mean that options-related communications can be in "poor taste." Prohibitions against misleading, untruthful or exaggerated statements, among other things, are contained in the SROs' options communication rules and apply to all options communications.

[6] Earnings projections for various options strategies are commonly provided to customers by means of worksheets.

of a review of an options advertisement by an SRO. The Guidelines state that an SRO review of an advertisement is not an endorsement of the investment plan or its suitability for investors but rather a review to determine if the information contained in the advertisement is consistent with the requirements of the rules of the SROs.

The amendments to the Guidelines also clarify standards with respect to whether hypothetical examples constitute projected performance figures.[7] Specifically, the amendments provide that examples of profitable options transactions, including those involving an underlying security, which use hypothetical securities and prices are not considered projected performance figures and are permitted in educational material so long as no suggestion is made that profits are probable. However, examples of profitable options transactions must be accomplished by examples of breakeven situations on the same hypothetical option transaction as well as a description of the risks. The amendments also require that a statement to the effect that the examples were constructed for illustration purposes only be included.

In addition, the Guidelines are amended to reflect that any communication that discussed the use or advantages of a particular options strategy should disclose the fact that commissions and other costs may be a significant factor. Previously, the Guidelines stated that advertisements or sales literature only had to reflect the fact that a subsequent exercise or closing transaction would be subject to commission charges.

Further, the amendments to the Guidelines establish criteria for firms to consider when determining whether or not a particular investment approach could be deemed an options program. Additionally, the amendments require that options communications must contain a warning statement that options are not suitable for all investors when discussing the uses and advatange of options. The amendments also replace the reference in the Guidelines to the Options Clearing Corporation prospectus with a reference to the options disclosure document, and reiterate the requirement that member firms must comply with the requirements for disclosure of membership in the Securities Investors Protection Corporation ("SIPC"), when applicable, pursuant to the SIPC by-laws promulgated under the Securities Investors Protection Act.

Finally, the Guidelines were amended to provide a list of some of the risks of trading in index options that should be disclosed in communications dealing with index options, as well as a description of the risks of uncovered options writing and combination writing that should be disclosed in communications dealing with these strategies. With regard to communications dealing with uncovered writing, the Guidelines also suggest that the Special Statement for Uncovered Writers ("Special Statement") be offered in such communications.[8]

The SROs believe that the proposed rule changes are consistent with section 6(b) of the Act, in general, and further the objectives of section 6(b)(5), in particular, in that they are designed to promote just and equitable principles of trade and protect investors and the public interest.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The SROs do not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments on the proposed rule changes were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the respective principal offices of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by February 26, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: January 29, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2645 Filed 2-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28332; International Series Release No. 225; File No. SR-Amex-90-22]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Foreign Issuers and Rights Offerings

On October 31, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to

[7] A principal distinction between sales literature, which is not subject to pre-use approval, and educational material, which is, is that educational material cannot contain any past or projected performance figures, annualized rates of return, or recommendations.

[8] *See* Securities Exchange Act Rel. No. 26952 (June 21, 1989) 54 FR 27256 (June 28, 1989) (order approving File Nos. SR-Amex-89-03, SR-CBOE-89-01, SR-NASD-89-17, SR-Phlx-89-17, SR-PSE-89-14). Member organizations are required to provide the Special Statement to options customers who intend to engage in uncovered writing.

[9] 17 CFR 200.30-3(a)(12) (1990).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

amend the Exchange's listing standards, policies and requirements as set forth in sections 110 and 340 of the Amex Company Guide. The proposed amendment to section 110 would modify the Exchange's listing requirements for foreign issuers. The proposed amendment to section 340 would modify the Exchange's listing requirements with respect to subscription rights in order to allow listed companies to issue nontransferable rights.

The proposed rule change was noticed in Securities Exchange Act Release No. 28671 (December 4, 1990), 55 FR 50911 (December 11, 1990). No comments were received on the proposal.

The Exchange proposes to amend section 110 of the Amex Company Guide in order to modify the procedure for foreign issuers seeking to list their securities on the Amex. Several years ago, the Commission approved amendments to section 110 to permit the Amex to consider a foreign issuer's compliance with the laws, customs and practices of the country of its origin in determining whether the company has complied with the four corporate governance listing standards of the Exchange. Specifically, section 110 provides flexibility to the Exchange in listing the securities of a foreign issuer which do not satisfy the otherwise applicable listing standards in the following corporate governance areas: (i) The election and composition of the board of directors; (ii) issuance of quarterly reporting statements; (iii) shareholder approval requirements; and (iv) quorum requirements for shareholder meetings.[3] Pursuant to section 110, a foreign issuer is eligible to list on the Amex provided that it furnishes an opinion from local counsel that the nonconforming practice is consistent with the laws, customs and practices of its home country.[4]

The current Amex proposal would permit the Exchange to consider any nonconforming practice of a foreign issuer in the four corporate governance areas which is not prohibited by the issuer's home country law in determining whether the issuer is eligible to list on the Amex. Amended section 110 would provide that a foreign issuer, which is seeking relief under section 110, must provide written certification from independent local counsel that the noncomplying practice is not prohibited by home country law.[5] Accordingly, the Amex proposal would permit the Exchange to waive or modify its corporate governance listing standards when a foreign issuer can show that its procedure is not prohibited by the laws of a foreign country. The Amex states that the amendment to section 110 will facilitate the listing process for foreign issuers on the Exchange.

The Amex also proposes to amend section 340 of its listing standards and requirements. Existing section 340 requires that subscription rights of a listed company be freely transferable.[6] The Amex stated that this provision originally was adopted to ensure that all shareholders, even those who do not choose to exercise their rights, are able to sell their rights and thereby receive some monetary value. This was particularly important because the price of the underlying stock was reduced by the value of the right that was distributed.

The Amex proposes to delete this requirement and, thereby, to allow listed companies to issue nontransferable rights. The Amex proposes to amend the Form SD–1 Listing Agreement to reflect the change to its subscription rights provision in section 340. The Amex states that the amendment to section 340 is designed to eliminate an outdated policy to which only Amex listed companies are subject.[7] The Amex states that in recent years a number of Amex companies, citing tax and other concerns, have sought to distribute nontransferable rights to their shareholders. Moreover, the Amex argues that when nontransferable rights are distributed, the price of the underlying security is not reduced by the value of the right, which assures that no shareholder suffers any economic loss. The Amex also states that, as a practical matter, commission fees would discourage small investors from selling their rights.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[8] Section 6(b)(5) of the Act requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest and remove impediments to and perfect the mechanism of a free and open market, and must not be designed to permit unfair discrimination between issuers. Section 6 (b)(8) requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission also believes that the proposed rule change is consistent with Sections 12 and 13 of the Act,[9] which require issuers to file periodical and other reports with the Commission.

The Commission believes that permitting the Amex to waive or modify certain corporate governance listing standards for foreign companies when the foreign company's procedure is not prohibited by the laws of the home country will facilitate the listing process for foreign issuers on the Exchange. The amendment to Section 110 should help to simplify the administration and application of the Amex's current listing rules. For example, it may be easier to show that a certain corporate governance matter is not prohibited by the home country rather than to show

[3] See Securities Exchange Act Release No. 24634 (June 23, 1987), 52 FR 24230 (June 29, 1987) by which the Commission approved proposed rule changes submitted by the Amex and the New York Stock Exchange ("NYSE") to amend the Exchanges' listing requirements for foreign companies (File Nos. SR–Amex–86–6 and SR–NYSE–86–14). The proposal did not alter a foreign company's obligation to comply with the Amex's policy on timely disclosure of important corporate developments. Accordingly, if there was a significant change in earning trends between semi-annual earnings reports, the foreign company generally would be required to disclose such news. See Amex Company Guide, section 401. The National Association of Securities Dealers ("NASD") adopted a similar rule. See Securities Exchange Act Release No. 26432 (June 23, 1987), 52 FR 24233 (June 29, 1987) (Order approving File No. SR–NASD–86–27 relating to eligibility standards for issuers of NASDAQ National Market System ("NMS") securities). See also Securities Exchange Act Release No. 24633 (June 23, 1987), 52 FR 24234 (June 29, 1987) (Order approving amendments to the transaction reporting plan for NASDAQ/NMS securities).

[4] The foreign company still must meet the quantitative listing standards required for domestic companies or the alternative standards established for foreign companies. See Amex Company Guide, §§ 101, 102, 109, 110. The Amex alternative standards for securities of foreign companies require, for example, 1 million publicly-held shares worldwide, an aggregate market value for those shares of $20 million, and stockholders' equity of $25 million. See § 110. For foreign companies choosing to list under standards for domestic companies, the Amex requires a minimum public distribution of 500,000 shares, stockholders' equity of $4 million, and pre-federal tax net income of $750,000. See §§ 101, 102.

[5] The Commission recently approved a similar rule change submitted by the NYSE. See Securities Exchange Act Release No. 27554 (December 20, 1989), 54 FR 53227 (December 27, 1989) (File No. SR–NYSE–89–16).

[6] The Amex stated that companies issue subscription rights as an inexpensive means to raise new capital from their existing shareholders. In this process, whole or fractional rights, entitling the holders to subscribe for new shares at a discounted price, are distributed for each outstanding share of common stock. Subscription rights ordinarily expire within 20 to 30 days and usually trade at a price well below a dollar.

[7] Neither the NYSE nor the NASD have such a policy.

[8] 15 U.S.C. 78f (1988).

[9] 15 U.S.C. 781, 78m (1988).

that it is a practice in that country. In addition, the Commission notes that section 110 will require foreign companies to furnish the Exchange with an opinion from local independent counsel that the noncomplying practice of the issuer is not prohibited by the laws of its home country. This independent opinion should assist the Exchange in evaluating whether a foreign issuer has satisfied all the legal requirements applicable under the laws of its home country.

The Commission believes that the rule proposal provides for easier access to the U.S. market for foreign issuers that could not previously be traded on the Amex due to differences in their home country's laws and to difficulties in complying with current section 110's procedures. At the same time, the Commission does not believe that the amendment will jeopardize the purpose and benefits of the foreign listing standards. First, the amendment will apply only to listing standards in the four corporate governance areas. As described above, to qualify for listing, foreign companies must still meet the quantitative standards required for domestic companies or the alternative listing standards established for foreign countries.[10]

Second, the Amex listing standards which relate to investor protection through public disclosure of significant corporate events are unaffected by the proposal.[11] In particular, as described above, proposed and existing Amex rules do not exempt foreign companies from complying with the disclosure policies of exchange rules or federal securities laws such as section 13 under the Act. In addition, the Commission notes that it recently approved a similar rule change submitted by the NYSE.[12]

The proposal is not inconsistent with the requirements of sections 6(b)(5) and 6(b)(8) of the Act regarding discrimination among issuers and the removal of burdens on competition. As the Commission discussed in its order originally approving the foreign issuer exemption to section 110, U.S. investors who are interested in purchasing foreign securities may execute their orders in a foreign market which may offer less protection to investors. By waiving these four corporate governance listing standards for foreign issuers only, certain foreign securities that previously could not be traded on the Amex will be eligible to trade on this U.S. regulated exchange. This will result in increased regulatory protection for investors. The proposed rule change by the Amex merely facilitates the granting of these exemptions to foreign companies.

The Commission believes that the Amex's proposed amendment to section 340, which will allow Amex listed companies to issue nontransferable rights, should ease existing burdens on competition by removing a listing requirement which applies only to Amex listed companies. The Commission notes that the Amex has represented that a number of Amex listed companies have sought to distribute nontransferable rights to their shareholders. In addition, because subscription rights entitle their holders to subscribe for new shares at a discounted price, the Commission believes that the proposal should provide an inexpensive means for companies to raise new capital from their existing shareholders. The Commission also believes that the proposed amendment to the Form SD–1 Listing Agreement is necessary to implement the substantive amendment to section 340.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Dated: January 29, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2592 Filed 2–4–91; 8:45 am]

BILLING CODE 8010–01–M

[10] See Amex Company Guide, Sections 101, 109, 110. These standards should ensure that foreign companies listed on the Amex are well-established companies whose shares are widely held. The Commission believes that application of the Amex's quantitative listing standards to foreign companies should help adequately protect the public and should not result in a reduction in investor protection.

[11] See Securities Exchange Act Release No. 24634, *supra* note 3.

[12] See *supra* note 5.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3 (a)(12) (1990).

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

January 29, 1991.

On January 7, 1991, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–6508	USHC	U.S. HealthCare, Inc.; $.005 par value.

In addition, upon approval of this application the security will be assigned to a Specialist/Odd Lot Dealer, pursuant to the rules of the Exchange.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issue:

File No.	Symbol	Issuer
7–6509	LDMFB	Laidlaw, Inc.; No par value.

The replacement issue is being requested as a result of Laidlaw, Inc. listing on the New York Stock Exchange.

Comments

Interested persons are invited to submit, on or before February 18, 1991, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which require that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2591 Filed 2–4–91; 8:45 am]

BILLING CODE 8010–01–M

(Release No. 34–28837; File No. SR–NYSE–91–03)

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Revised Odd-Lot Order Pricing Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),

15 U.S.C. 78s(b)(1), notice is hereby given that on January 14, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 124 to eliminate all differentials on odd-lot orders executed on the Exchange, except for those orders requiring manual handling. This proposed rule change will make permanent the revised pricing procedures tested on the Exchange during the pilot program which commenced in June, 1990 and expires in January, 1991.[1] The Exchange seeks accelerated approval of the proposal so that the revised odd-lot pricing procedures may continue on an uninterrupted basis when the pilot expires on January 31, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed amendments to NYSE Rule 124 is to (i) eliminate differentials on all odd-lot orders and (ii) extend the "no commission policy" to cover floor brokerage charges on all systematized odd-lot orders in order to improve customer odd-lot order execution. However, specialists will continue to be permitted to charge a differential on those odd-lot orders which are not executed via the odd-lot system but which require manual handling.

Under the current provisions of Rule 124, all standard odd-lot market orders, and limit orders with the instruction "with or without sale," are not charged a differential. Specialists are permitted to charge a differential on all other odd-lot limit orders executed through the system and on any odd-lot order which requires manual handling.

Odd-lot limit orders must be executed on the first eligible effective transaction. Under the current odd-lot pricing procedures, the effective transaction for a limit order to buy or sell long is the first round-lot transaction above or below the specified limit by the amount of the differential or by a greater amount.

Under the proposed amendments to Rule 124, the effective transaction that will trigger the execution of an odd-lot limit order is a transaction at or lower than the specified limit for a buy limit order, or at or higher than the specified limit for sell limit orders.

Pilot program. The Exchange seeks to implement on a permanent basis the odd-lot pricing procedures which were utilized during the seven month pilot program conducted from June 1990 through January 1991. The pilot program was conducted in two phases; the first phase involved three member firms and ran from June through October 1990.[2] The second phase made the pilot procedures available to three additional firms besides the original three member firms, and expires on January 31, 1991.[3] During the pilot, six member organizations, representing a cross-section of member organizations with an active retail business, were not charged a differential or Floor brokerage on any odd-lot orders entered through the Exchange's odd-lot execution system.[4]

The pilot program gave the Exchange the opportunity to examine odd-lot order flow and trading patterns in a limited environment with a cross-section of member firms and investors. The elimination of odd-lot order differentials during the pilot provided no evidence of any trading abuses or regulatory problems.[5] The Exchange believes the proposed amendments to Rule 124 will enhance the efficiency of odd-lot order executions for all investors and member firm customers by providing more economic pricing policies for these orders.

The proposed revisions to Rule 124 would make the new odd-lot pricing procedures applicable to all eligible odd-lot orders entered for execution to the NYSE's odd-lot system by all members and member organizations.

Other odd-lot order types. It should be noted that the Exchange does not propose to eliminate the differentials on those odd-lot orders which require manual handling, *e.g.*, orders for non-regular way settlement under Rule 64 [6] and basis price orders.[7] However, specialists will no longer charge differentials on odd-lot market orders intended for execution on the closing bid or offer; such orders could previously be assessed a differential under the provisions of Rule 124. Limited orders to buy or sell marked "or on close" are no longer valid order types that can be processed through the Exchange's odd-lot system and will therefore be deleted from Rule 124.

Identification of orders for Comparison and Clearance. Under the proposed amendments to Rule 124, members and member organizations will be required to identify all orders submitted for execution to the NYSE odd-lot system with the appropriate account type identifiers as required by

[1] See Securities Exchange Act Release Nos. 28040 (May 22, 1990), 55 FR 21999 (May 30, 1990) (File No. SR-NYSE90-22) and 28535 (October 15, 1990), 55 FR 42668 (October 22, 1990) (File No. SR-NYSE-90-50).

[2] See Securities Exchange Act Release No. 28040, *supra* note 1.

[3] See Securities Exchange Act Release No. 28535, *supra* note 1.

[4] The Commission previously approved a proposed rule change which eliminated differentials and floor brokerage charges on standard systematized odd-lot market orders. See Securities Exchange Act Release Nos. 25177 (December 7, 1987), 52 FR 47472 (December 14, 1987); 27495 (December 1, 1989), 54 FR 50676 (December 8, 1989); and 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990). The pilot program discussed herein applies to odd-lot limit orders entered through the system.

[5] During the operation of the pilot, the Exchange has gathered information concerning the impact of eliminating odd-lot charges. The Exchange has stated that the mix of odd-lot market orders versus limit orders has remained near historical levels. The Exchange also has stated that there have been no significant systems problems during the pilot, and surveillance of the trading patterns of customers has not revealed any abusive practices. Telephone conversation between Robert Flynn, NYSE, and Diana Luka-Hopson, Commission, on January 23, 1991.

[6] NYSE Rule 64 provides that bids and offers in securities admitted to dealings on an issued basis, other than U.S. government securities, made regular way are for delivery on the fifth business day following the day of contract.

[7] NYSE Rule 124(B) (4) provides that an order may be filled at the "Basis Price" provided a Basis Price has been established, the order was received at least half an hour before the close of the market, and marked "On Basis." Basis Prices are established by joint agreement of odd-lot dealers in 100-share unit stocks where there has been no round-lot sale during the trading session, the spread between the closing bid and offer prices is two points or more and an odd-lot dealer has been given an "On Basis" order. The Basis Price must be reviewed and approved by a Floor Official. See NYSE Rule 124(B)(4).10.

Rule 132.[8] This will establish audit trail capability for odd-lot orders in a manner consistent with round-lot order audit trail procedures.

(b) Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b) (5) that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-03 and should be submitted by February 26, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) of the Act.[9] The Commission believes that the proposal's goal, which is to eliminate odd-lot differentials and floor brokerage charges, should increase the quality of execution and accurate reporting of customer odd-lot limit orders. The Commission believes that the proposal should further the Commission's objective of ensuring that customers receive the best execution of such orders. As a result of the proposal, the price charged for the execution of systematized odd-lot orders will reflect the market's price without additional transaction charges.

The Commission believes that the NYSE's experience with the seven month, six member firm pilot program assisted the NYSE in designing odd-lot pricing rules that should facilitate the execution of odd-lot orders. This pilot permitted the Exchange to examine odd-lot order flow and trading patterns with a cross-section of member firms and investors. Based on information gathered during the pilot program, the NYSE has stated that the elimination of odd-lot order differentials has not resulted in trading abuses or regulatory problems.

The Commission also believes that the proposed amendments to Rule 124 which will require that Exchange members and member organizations identify all orders submitted for execution to the NYSE odd-lot system with appropriate account type identifiers should enhance the Exchange's audit trail capability. The proposal will establish audit trail capability for odd-lot orders that is consistent with the NYSE's round-lot order audit trail procedures. This should increase the Exchange's ability to reconstruct market activity which, in turn, should improve the Exchange's surveillance programs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Acceleration of approval of the proposed rule change will permit the Exchange to immediately extend improved odd-lot pricing procedures utilized in the pilot program to all investors. In addition, the substance of this proposal was published twice in the **Federal Register** for the full statutory period and no comments were received.[10] Finally, accelerated effectiveness will permit the implementation of the procedures without interruption on the termination of the pilot program on January 31, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: January 29, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2593 Filed 2-4-91; 8:45 am]

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[8] NYSE Rule 132 requires that each party to a trade submit data regarding its side of the contract to a Fully-Interfaced Clearing Agency or a Qualified Clearing Agency or such transactions will be compared or settled in accordance with the rules of the Exchange. The account identifiers required by this rule include (1) name or identifying symbol of the security; (2) number of shares or quantity of security; (3) transaction price; and (4) time the trade was executed.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] See Securities Exchange Act Release Nos. 28040 and 28535, *supra* note 1.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a) (12) (1990).

DEPARTMENT OF STATE

Office of the Under Secretary for Economic Affairs

[Public Notice 1332]

Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from MG Industries for a permit, pursuant to Executive Order 11423 of August 16, 1968, to construct, connect, operate and maintain at the United States/Mexico border a pipeline between Tijuana, Baja California, Mexico and San Diego, California. MG Industries is a Delaware corporation with headquarters in Valley Forge, Pennsylvania. MG Industries is a wholly owned subsidiary of Messer Griesheim GmbH, a German corporation with its principal office located in Frankfurt, Germany. The pipeline to be constructed would be used for the transportation of liquid oxygen and liquid nitrogen.

DATES: Interested parties are invited to submit, in duplicate, comments relative

to this proposal on or before March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Akuetteh, Office of Global Energy, Department of State, Washington, DC 20520, (202) 647–2857.

Dated: January 25, 1991.

Richard T. McCormack,

Under Secretary of State.

[FR Doc. 91–2658 Filed 2–4–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 25, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket number: 47367.
Date filed: January 22, 1991
Parties: Members of the International Air Transport Association
Subject: RESO 024F (Fares from Mozambique)
Proposed effective date: February 1, 1991

Docket number: 47368.
Date filed: January 22, 1991
Parties: Members of the International Air Transport Association
Subject: Mail Vote 458 (Fares from USSR)
Proposed effective date: February 1, 1991

Docket number: 47369.
Date filed: January 22, 1991
Parties: Members of the International Air Transport Association
Subject: Mail Vote 460 (Hong Kong-to-Japan fares)
Proposed effective date: February 1, 1991

Docket number: 47381.
Date filed: January 22, 1991
Parties: Members of the International Air Transport Association
Subject: North Atlantic-Africa Resos—R–1 To R–18
Proposed effective date: April 1, 1991

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–2614 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended January 25, 1991

The following applications for certificate of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46308
Date filed: January 22, 1991
Due date for answers, conforming applications, or motion to modify scope: February 19, 1991

Description: Amendment #2 to the Application of Aeroejecutivos, C.A., pursuant to section 402 of the Act and subpart Q of the Regulations, of its foreign air carrier permit with respect to Paragraph 5 of the Original application which should be amended to read as follows:

Applicant seeks foreign air carrier permit to engage in scheduled foreign air transportation of property and mail:

A. From a point or points in Venezuela, on the one hand, to Miami, Florida, on the other.

B. From Caracas, Venezuela to San Juan, Puerto Rico.

C. Applicant requests permission to serve Aruba, Bonaire or Curacao as intermediate points on flights between Caracas and Miami or San Juan.

D. Applicant also requests on- and off-route charter authority as appropriate under part 212 of the Department's Economic Regulations.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–2613 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

[(Order 91–1–65), Docket 47037]

Applications of Baltia Air Lines, Inc.; for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation, OST.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Baltia Air Lines, Inc., fit, willing, and able to engage in foreign scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than February 14, 1991.

ADDRESSES: Objections and answers to objections should be filed in Docket 47037 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: January 30, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–2612 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 91–006]

Boat Safety Account of the Aquatic Resources Trust Fund; Availability of Fiscal Year 1991 Financial Assistance

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of availability of FY 91 financial assistance.

SUMMARY: Pursuant to title 46, United States Code, section 13103(c), the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities. The Coast Guard has fiscal year 1991 funds available to subsidize selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level.

DATES: Proposals must be submitted to the following address by April 1, 1991.

ADDRESSES: Specific information on organization eligibility, proposal requirements award procedures, financial administration procedures and application packages may be obtained from Commandant (G–NAB–5), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes by telephone at (202) 267–0954 or at U.S. coast Guard Headquarters (G–NAB–5), 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 percent of the available funds to

national nonprofit public service organizations for national boating safety activities. Up to $1,750,000 is available for the fiscal year ending September 30, 1991. Fifteen awards totaling $1,495,500 were made in fiscal year 1990; awards ranged from $24,000 to $290,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Chief, Office of Naviation Safety and Waterway Services, U.S. Coast Guard. Applicants must be responsible, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope.

Some general areas of particular interest include:

- Boating accident studies and analyses.
- Projects to research, design and develop training aids for boating education programs, including films, tapes, books, classroom materials and other items.
- Projects to design and develop boating safety education media and materials (films, tapes, books) for use by the boating public, including the boater, marine enforcement personnel, and the boating industry.
- Projects to support national boating safety media efforts, e.g. National Safe Boating Week, education seminars, public service announcements.
- Technical or engineering projects to research suspected safety problems on specific boat or associated equipment types.
- Evaluation studies of the effectiveness of selected boating education safety materials.
- Projects designed to increase the public awarness of the Coast Guard's Boating Safety Hotline "800" number.

This list should not constrain submission of proposals addressing other boating safety concens. Innovative approaches are welcome. This fiscal year, discussions of specific projects of interest to the Coast Guard will be included in the information packages discussed in **ADDRESSES**, above.

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 28, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-2664 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-14-M

[CGD 91-009]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on Wednesday, April 3, 1991, in room 2415 of U.S. Coast Guard Headquarters. The meeting is scheduled to run from 1 p.m. to 4 p.m. Attendance is open to the public. The agenda follows:

1. Subcommittee Reports

(a) Personnel Manning and Licensing
(b) Tub-Barge Construction, Certification and Operations
(c) Personnel Safety and Workplace Standards

2. Other Topics of Discussion

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Executive Director by March 28, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Pensivy, Executive Director, Towing Safety Advisory Committee, room 2412, U.S. Coast Guard Headquarters (G-MP-2), 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1406.

Dated: January 29, 1991.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-2663 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Republic Airport, East Farmingdale, NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the New York State Department of Transportation (NYSDOT) for the Republic Airport, East Farmingdale, NY (FRG), under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for FRG under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before July 13, 1991.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 14, 1991. The public comment period ends February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA—Eastern Regional Office, Airports Division, AEA-610, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430, (718) 917-0902.

Comments on the proposed noise compatibility program should be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the FRG Airport are in compliance with applicable requirements of part 150, effective January 14, 1991. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 13, 1991. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), part 150,

promulgated pursuant of title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

NYSDOT submitted to the FAA on April 14, 1988, noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from August 1985 to June 18, 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the NYSDOT. The specific maps under consideration are "the 1985 Base Case Contours (Figure 3.5) and the Five Year Map 1990 Contours" (Figure 7.1). These Figures are included in the Final Report, Republic Airport Part 150 Study.

The FAA has determined that these maps for FRG are in compliance with applicable requirements. This determination is effective on January 14, 1991. FAA's determination on an Airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA formally received the noise compatibility program for FRG, also effective on April 14, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 13, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. The public comment period ends February 28, 1991. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW, room 617, Washington, DC 20591

Eastern Regional Office, FAA—Fitzgerald Federal Building, Airports Division, JFK International Airport, Jamaica, NY

New York Airports District Office, FAA—181 S. Franklin Ave., 3rd Floor, Valley Stream, NY 11581

Airport Manager, New York State Department of Transportation, Republic Airport, East Farmingdale, NY.

Questions and comments may be directed to the individual named above under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Jamaica, NY on January 14, 1991.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 91-2622 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Pensacola for the Pensacola Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Pensacola Regional Airport under part 150 in conjuction with the noise exposure map, and that this program will be approved or disapproved on or before July 23, 1991.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 25, 1991. The public comment period ends March 25, 1991.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, P.E., Federal Aviation Adminstration, Orlando Airports Districts Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397, (407) 648-6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Pensacola Regional Airport are in compliance with applicable requirements of part 150, effective January 25, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 23, 1991. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act", an airport operator may submit to the FAA noise exposure maps

which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act require such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Pensacola submitted to the FAA on May 10, 1990, noise exposure maps, descriptions and other documentation which were produced during the Pensacola Regional Airport FAR part 150 Study between August 1988, and May 1990. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a) (1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Pensacola. The specific maps under consideration are Existing Conditions (1988) Noise Exposure Map and Five Year (1993) Noise Exposure Map (UNABATED) in the submission. The FAA has determined that these maps for the Pensacola Regional Airport are in compliance with applicable requirements. This determination is effective on January 25, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exosure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Pensacola Regional Airport, also effective on January 25, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 23, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, created an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Indpendence Avenue, SW., room 617, Washington, D.C. 20591.

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397.

Mr. Frank Miller, Airport Director, Pensacola Regional Airport, 2390 College Boulevard, Pensacola, FL 32504–8977.

Questions may be directed to the individual named above under the heading, "**FOR FURTHER INFORMATION CONTACT**".

Issued in Orlando, Florida January 25, 1991.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 91–2623 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–13–M

Sikorsky Memorial Airport, Bridgeport, CT; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Aviation Commission of the City of Bridgeport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On July 25, 1990, the FAA determined that the noise exposure maps, submitted by the City of Bridgeport, Connecticut, under part 150, were in compliance with applicable requirements. On December 26, 1990, the Assistant Administrator approved the Sikorsky Memorial (BDR) noise compatibility program. Out of the 18 proposed program elements, 15 were approved. Three were disapproved.

EFFECTIVE DATE: The effective date of the FAA's approval of the BDR noise compatibility program is December 26, 1990.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–602, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273–7060.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the BDR

noise compatibility program, effective December 26, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport nopise compatibility program developed in accordance with Federal Aviation Regulation (FAR), part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982.

Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Aviation Commission of the City of Bridgeport submitted to the FAA, on Decemberr 21, 1988, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1987 to November 1989. The BDR noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 29, 1990. Notice of this determination was published in the Federal Register on July 25, 1990.

The BDR study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1993. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 29, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 18 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator effective December 26, 1990.

Approval was granted for 15 specific program elements. Making formal an existing nighttime runup restriction was disapproved. An informal, voluntary restriction has been effective and it's continued use is approved. A nighttime use restriction was disapproved pending submission of additional information to make an informal analysis. Finally, a connector taxiway was disapproved for purposes of part 150 (noise abatement). The taxiway is already proposed for operational and safety purposes, as indicated on the airport layout plan. The 15 approved program elements include a preferential runway system, noise abatement, helicopter patterns and departure procedures, support for an FAA proposal to install an approach light system to Runway 06, an airport compatibility zoning ordinance, noise complaint procedures, a tape recording system to monitor operations when the air traffic control tower is closed, continuation of a noise abatement committee to monitor implementation, quantitative evaluation of changes in noise exposure, the assessment of changes in noise exposure brought about by changes in airport layout, a five-year reassessment of noise, and program publicity which includes a Letter to Airmen, on-airfield signage and a recorded noise abatement message on the Automatic Terminal Information Service recording.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator December 26, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Airport Manager, Second Floor, Terminal Building, Sikorsky Memorial Airport, 1000 Great Meadow Road, Stratford, Connecticut.

Issued in Burlington, Massachusetts on January 15, 1991.

Vincent A. Scarano,

Manager, Airports Division New England Region.

[FR Doc. 91-2630 Filed 2-4-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 91-5]

National Bicycling and Walking Study; Request for Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1991 directs the Secretary of Transportation to submit a report to the Congress on how the Department of Transportation

can best fulfill its stated policies relating to bicycling and walking. The purpose of this notice is to describe the objectives of a national bicycling and walking study and the tentative approach to be followed, and to request any information and comments that should be considered in carrying out the study and/or preparing the report.

DATES: Comments are requested on or before June 30, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 91–5, Federal Highway Administration, room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas R. Weeks, Chief, Planning and Programming Branch, (202) 366–5002; or Mr. Reid Alsop, Office of the Chief Counsel, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Study Mandate

The Department of Transportation and Related Agencies Appropriations Act of 1991, Pub. L. 101–516, 104 Stat. 2155, directs the Department of Transportation to prepare a report with the following objectives:

1. Determine current levels of bicycling and walking and identify the reasons why they are not better used as a means of transportation.
2. Develop a plan for the increased use and enhanced safety of these modes and identify the resources necessary to implement and achieve this plan.
3. Determine the full costs and benefits of promoting bicycling and walking in urban and suburban areas.
4. Review and evaluate the success of promotion programs around the world to determine their applicability to the role required of the U.S. Department of Transportation to implement a successful program.
5. Develop an action plan, including timetable and budget, for implementation of such Federal transportation policy.

It is anticipated that a preliminary report will be submitted to the Congress no later than June 30, 1991 and a final report no later than June 30, 1992.

Study Approach

In conducting the study, the FHWA will consult with other Federal agencies, the States, interested private organizations, groups, and individuals. The FHWA will analyze the information gathered through the consultation process and other means, and prepare the report to Congress addressing the study objectives.

Comments and information pertaining to the conduct of the study and addressing the five major congressionally mandated objectives should be sent to the docket established for this notice.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: January 28, 1991.

T.D. Larson,

Administrator.

[FR Doc. 91–2578 Filed 2–4–91; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

United States Customs Service

[T.D. 91–8]

Approval of I.N.C. Surveys, Inc. as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Approval of I.N.C. Surveys, Inc., as a Commercial Gauger.

SUMMARY: I.N.C. Surveys, Inc., of Houston, Texas recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that I.N.C. Surveys, Inc., meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, I.N.C. Surveys, Inc., 7015 Gulf Freeway, suite 150, Houston, Texas 77087 is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: January 8, 1991.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2446).

Dated: January 22, 1991.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 91–2599 Filed 2–4–91; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

Privacy Act of 1974, as Amended; Altered System of Records

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of altered system of records: Treasury/BPD .002—United States Savings-type Securities.

SUMMARY: The purpose of this document is to give notice under the provisions of the Privacy Act of 1974, as amended, that the Bureau of the Public Debt proposes to alter its present system of records number Treasury/BPD .002—United States Savings-type Securities. The reason for the changes stems from plans to implement a new automated system for processing current income savings bonds, which are covered by this system of records. As a result, personnel in selected Federal Reserve Banks and Branches will have greater access to information about transactions in these securities.

The sections of the system notice which are being amended are "System Location," "Categories of Records," "Retrievability," "Safeguards," "System Manager and Address," "Notification Procedure," "Record Access Procedures," and "Contesting Record Procedures."

"System Location" is being updated to delete the names of the Federal Reserve Branches at Helena, MT, and El Paso, TX, since these types of records are no longer maintained at those locations. In addition the names of all Federal Records Centers are being deleted.

"Categories of Records" is being amended to reflect that records on investors' holdings and the issuance, processing and servicing of transactions in current income savings bonds will be done under a new automated system.

"Retrievability" can also be made by address and period of time the security was issued.

A statement is being added to "Safeguards" to show that records stored in computers with on-line terminal access cannot be accessed without proper passwords and preauthorized functional capability.

The "System Manager" is being changed from the Commissioner to the Assistant Commissioner in charge of the Savings Bond Operations Office.

The sections on "Notification Procedure" and "Contesting Records Procedures" have been clarified. The section on "Records Access Procedures" is being amended to reflect that requests from individuals for information about transactions in current income savings

bonds may be submitted to a Federal Reserve Bank or Branch or to the Bureau of the Public Debt.

DATES: Comments must be received no later than March 7, 1991. The altered system of records will become effective April 8, 1991, unless comments dictate otherwise.

ADDRESSES: Send any comments to D. Louise Bennett, Disclosure Officer, Bureau of the Public Debt, E Street Building, room 553, Washington, DC 20239-0001. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, Room 5030, Main Treasury Building, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: D. Louise Bennett, Disclosure Officer (202) 376-4307.

SUPPLEMENTARY INFORMATION: This system of records was last published on March 1, 1988, at 53 FR 6471. Not reflected in that publication were changes published January 22, 1988, at 53 FR 1885 and July 13, 1989, at 54 FR 29632.

Under the new automated system for current income savings bonds, selected Federal Reserve Banks and Branches will use the Federal Reserve Telecommunications Network for on-line, interactive processing and servicing of transactions. Individual Federal Reserve Banks and Branches will no longer print current income savings bonds. Instead, the new automated system will gather the bond issue information entered by selected Banks and Branches for consolidated printing and mailing at the Pittsburgh Branch of the Federal Reserve Bank of Cleveland. This will be more efficient and cost-effective for Public Debt and the investor.

An amended system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Office of Management and Budget (OMB) and Congress pursuant to Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Dated: January 29, 1991.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

Treasury/BPD .002

SYSTEM NAME:

United States Savings-type Securities.

SYSTEM LOCATION:

Bureau of the Public Debt: Washington, DC; Parkersburg, and Ravenswood, WV. Federal Reserve Banks and Branches located at: Atlanta, GA; Baltimore, MD; Birmingham, AL; Boston, MA; Buffalo, NY; Charlotte, NC; Chicago, IL; Cincinnati, OH; Cleveland, OH; Dallas, TX; Denver, CO; Detroit, MI; Houston, TX; Jacksonville, FL; Kansas City, MO; Little Rock, AR; Los Angeles, CA; Louisville, KY; Memphis, TN; Miami, FL; Minneapolis, MN; Nashville, TN; New Orleans, LA; New York, NY; Oklahoma City, OK; Omaha, NE; Philadelphia, PA; Pittsburgh, PA; Portland, OR; Richmond, VA; Salt Lake City, UT; San Antonio, TX; San Francisco, CA; Seattle, WA; and St. Louis, MO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former owners of, claimants to, persons entitled to, and inquirers concerning United States savings-type securities and interest thereon—including, but not limited to, United States Savings Bonds, Savings Notes, Retirement Plan Bonds, and Individual Retirement Bonds.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Issuance: Records relating to registration, issuance, and correspondence in connection with issuance of savings-type securities. This category includes records of current income savings bonds processed under an automated system which will permit access by selected Federal Reserve Banks and Branches. (2) Holdings: Records documenting ownership, status, payments by date and account numbers, and inscription information; interest activity; correspondence in connection with notice of change of name and address; non-receipt or over- or underpayments of interest and principal; and numerical registers of ownership. Such records include information relating to savings-type securities held in safekeeping in conjunction with the Department's program to deliver such securities to the owners or persons entitled. This category includes records of current income savings bonds processed under an automated system which will permit access by selected Federal Reserve Banks and Branches. (3) Transactions (redemptions, payments, and reissues): Records, which include securities transaction requests; interest activity; legal papers supporting transactions; applications for disposition or payment of securities and/or interest thereon of deceased or incapacitated owners; records of retired securities; and payment records. This category includes records of current income savings bonds processed under an automated system which will permit access by selected Federal Reserve Banks and Branches. (4) Claims: Records including correspondence concerning lost, stolen, destroyed or mutilated savings-type securities; bonds of indemnity; legal documents supporting claims for relief; and records of caveats entered. (5) Inquiries: Records of correspondence with individuals who have requested information concerning savings-type securities and/or interest thereon.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3101, *et seq.* and 5 U.S.C. 301.

Purposes:

Information in this system of records is collected and maintained to enable Public Debt and its agents to issue savings bonds, to process transactions, to make payments, and to identify owners and their accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record or information from a record maintained in this system of records may be disclosed as a routine use to: (1) Agents or contractors of the Department for the purpose of administering the public debt of the United States; (2) next-of-kin, voluntary guardian, legal representative or successor in interest of a deceased or incapacitated owner of securities and others entitled to the reissue, distribution, or payment for the purpose of assuring equitable and lawful disposition of securities and interest; (3) either co-owner for bonds registered in that form or to the beneficiary for bonds registered in that form, provided that acceptable proof of death of the owner is submitted; (4) the Internal Revenue Service for the purpose of facilitating collection of the tax revenues of the United States; (5) the Department of Justice in connection with lawsuits to which the Department of the Treasury is a party or to trustees in bankruptcy for the purpose of carrying out their duties; (6) the Department of Veterans Affairs and selected veterans publications for the purpose of locating owners or other persons entitled to undeliverable bonds held in safekeeping by the Department; (7) other Federal agencies to effect salary or administrative offset for the purpose of collecting debts; (8) a consumer reporting agency, including mailing addresses obtained from the Internal Revenue Service, to obtain credit reports; (9) a debt collection agency, including mailing addresses obtained from the Internal Revenue Service, for debt collection services; (10)

contractors conducting Treasury-sponsored surveys, polls, or statistical analyses relating to the marketing or administration of the public debt of the United States; (11) appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (12) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena; (13) a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (14) disclose through computer matching information on individuals owing debts to the Bureau of the Public Debt to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments which may be used to collect the debt through administrative or salary offset; (15) disclose through computer matching information on holdings of savings-type securities to requesting Federal agencies under approved agreements limiting the information to that which is relevant in making a determination of eligibility for Federal benefits administered by those agencies; and (16) disclose through computer matching information on individuals with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing letter forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured unredeemed securities.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Debtor information is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

Records in this system are stored in their original form in file cabinets, or as information in electronic media, or on microform.

Retrievability:

Information can be retrieved alphabetically by name, address, and period of time security was issued, by bond serial numbers, or, in some cases, numerically by social security number. In the case of securities, except Series G savings bonds registered in more than one name, information relating thereto can be retrieved only by the name, or, in some cases, the social security number of the first-named co-owner.

Safeguards:

Information is contained in secure buildings or in areas which are occupied either by officers and responsible employees of Public Debt who are subject to personnel screening procedures and to the Treasury Department Code of Conduct or by agents of Public Debt who are required to maintain proper control over records while in their custody. Additionally, since in most cases numerous steps are involved in the retrieval process, unauthorized persons would be unable to retrieve information in meaningful form. Information stored in electronic media is safeguarded by automatic data processing security procedures in addition to physical security measures. Additionally, for those categories of records stored in computers with on-line terminal access, the information cannot be accessed without proper passwords and preauthorized functional capability.

Retention and disposal:

Records of holdings, forms, documents, and other legal papers which constitute the basis for transactions subsequent to original issue are maintained for such time as is necessary to protect the legal rights and interests of the United States Government and the persons affected, or otherwise until they are no longer historically significant. Other records are disposed of at varying intervals in accordance with records retention schedules reviewed and approved by the National Archives and Records Administration (NARA). All records are destroyed by shredding, incineration, or maceration. Records in electronic media are electronically erased using accepted techniques.

System manager and address:

Assistant Commissioner, Savings Bond Operations Office, Parkersburg, West Virginia 26106–1328.

Notification procedure:

Individuals may submit their requests for determination if the system contains records pertaining to them or for access to records as provided under "Record Access Procedures." Contesting records procedures or requests for correction of records and appeals from an initial denial of a request for correction of records may be submitted as provided under the applicable heading below.

Record access procedures:

Individuals who wish to request access to records relating to them or who wish to request correction of records they believe to be in error should submit such requests pursuant to the procedures set out below in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

(1) Requests by individuals about securities they own: (a) For current income savings bonds: Individuals may make inquiries at a Federal Reserve Bank or Branch or directly to the Bureau of the Public Debt, Savings Bond Operations Office, Division of Transactions and Rulings, Parkersburg, West Virginia 26106–1328, (304) 420–6112. If the particular Federal Reserve Bank or Branch cannot access the particular record, the individual will be advised to contact the Savings Bond Operations Office. Individuals should provide sufficient information, including their address and social security number, to identify themselves as owner or co-owner of the securities. They should provide sufficient information to identify the securities; this would include the series, approximate date of issue, serial number, form of registration, and, except for Series G Savings Bonds registered in co-ownership form, the name and social security number of the first-named co-owner. If a Case Identification Number is known, that should be provided. (b) For all other types of securities covered by this system of records: Individuals should contact the following: Bureau of the Public Debt, Savings Bond Operations Office, Division of Transactions and Rulings, Parkersburg, West Virginia 26106–1328, (304) 420–6112. Individuals should provide sufficient information, including their address and social security number, to identify themselves as owner or co-owner of the securities. Individuals should provide sufficient information to identify the securities, such as type or series of security, approximate date of issue, serial number, form of registration, and the name and social security number of the first-named co-owner.

(2) Requests by anyone other than individuals about securities they own must contain sufficient information to identify the securities; this would

include type or series of securities, approximate date of issue, serial number, and form of registration. These requests will be honored only if the identity and right of the requester to the information have been established. Requests should be sent to the following: Bureau of the Public Debt, Savings Bond Operations Office, Division of Transactions and Rulings, Parkersburg, WV 26106–1328, (304) 420–6112. (a) Requests by a beneficiary for information concerning securities registered in beneficiary form must be accompanied by the name and social security number of the owner and by proof of death of the registered owner. (b) Requests for records of holdings or other information concerning a deceased or incapacitated individual should be accompanied either by evidence of the requester's appointment as legal representative of the estate of the individual or by a statement attesting that no such representative has been appointed and giving the nature of the relationship between the requester and the individual.

Contesting record procedures:

(1) A request by an individual contesting the content of records or for correction of records should be in writing, be signed, and clearly state that the request is made pursuant to the Privacy Act of 1974. (2) The request for correction should specify: (a) The dates of the prior correspondence concerning the records in question; (b) the specific records alleged to be incorrect; (c) the correction requested; and (d) the reasons therefor. (3) The request must include any available evidence in support of the request. (4) The request for correction should be sent to: Director, Division of Transactions and Rulings, Savings Bond Operations Office, Bureau of the Public Debt, Parkersburg, WV 26106–1328, (304) 420–6112.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, be signed by the individual involved and clearly state that it is made pursuant to the Privacy Act of 1974. (2) All appeals must, to be processed under the Privacy Act procedures, be delivered to the address set forth for submission of appeals within 35 days of the individual's receipt of the initial denial of the requested correction. (3) All appeals must specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date that initial denial of the request for correction was received. (4) All appeals must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence. (5) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals should be addressed to, or delivered personally to the following: Privacy Act Amendment Appeal, Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 999 E Street, Room 503, Washington, DC 20239–0001, or as otherwise provided in the applicable appendix to 31 CFR part 1, subpart C.

Record source categories:

Information on records in this system is furnished by the individuals or their authorized representatives as listed in "Categories of Individuals" and issuing agents for securities or is generated within the system itself.

System exempted from certain provisions of the act:

None.

[FR Doc. 91–2583 Filed 2–4–91; 8:45 am]

BILLING CODE 4810–40–M

Office of Foreign Assets Control

Applications for Humanitarian Assistance to Vietnam and Cambodia

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Foreign Assets Control is accepting applications for licenses from nongovernmental organizations wishing to provide donated humanitarian assistance to Vietnam and Cambodia.

EFFECTIVE DATE: February 5, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535–6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535–9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

The Office of Foreign Assets Control, Department of the Treasury, ("FAC"), announces the availability of licenses for nongovernmental organizations wishing to donate humanitarian assistance to Vietnam and Cambodia, in accordance with U.S. policy toward these countries. FAC licenses are required for the provision of any U.S. funds or goods to recipients in Vietnam and Cambodia.

A Commerce Department license satisfies FAC licensing requirements for goods exported from the United States. See 31 CFR 500.533. Organizations seeking to export donated goods to Vietnam or Cambodia from the United States to meet basic human needs may apply for a license to the U.S. Department of Commerce.

FAC also announces that procedures for considering applications for FAC licenses for humanitarian donations financed by U.S. persons from third countries to Vietnam and Cambodia have been streamlined recently. In addition, such licenses involving continuing activities will henceforth be granted for periods of two years instead of one.

Dated: January 15, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 18, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91–2572 Filed 1–30–91; 3:39 pm]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs Voluntary Service National Advisory Committee has been renewed for a two-year period beginning January 22, 1991 through January 21, 1993.

Dated: January 29, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91–2647 Filed 2–4–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 24
Tuesday, February 5, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, February 11, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2853 Filed 2-1-91; 3:15 p.m.]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, February 8, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Issues with respect to testing for credit discrimination in mortgage lending.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2767 Filed 2-1-91; 12:43 p.m.]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Friday, February 8, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments and salary actions) involving Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2768 Filed 2-1-91; 12:43 pm]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 1:30 p.m., February 19, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 22, 1991, Board meeting.
2. Labor Department Briefing.
3. Thrift Savings Plan activity report by the Executive Director.
4. Review of Investment Policy.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: January 29, 1991.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91-2754 Filed 1-31-91; 4:37 pm]

BILLING CODE 6760-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-91-05]

TIME AND DATE: Wednesday, February 13, 1991 at 10:00 a.m.

PLACE: Room 101, 500 E Street, S.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain static random access memories, components thereof, and products containing same (Docket Number 1607).
5. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: January 28, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-2787 Filed 2-1-91; 12:43 pm]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, February 12, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTER TO BE DISCUSSED:

Finance Docket No. 31650 (Sub-No. 1), *Burlington Northern Railroad Company—Construction and Operation Exemption—Connector Track at Atmore, AL* and Finance Docket No. 31651 (Sub-No. 1), *Burlington Northern Railroad Company—Construction and*

Operation Exemption—Connector Track at Atmore, AL
Finance Docket No. 31388 (Sub-No. 1), *R.J. Corman Railroad Company/ Memphis Line—Purchase and Lease—CSX Transportation, Inc., Line Between Warwick and Uhrichsville, OH,* and Finance Docket No. 31481, *South Carolina Central Railroad Company, Inc.—Purchase—CSX Transportation, Inc., Line Between Dawson and Albany, GA*
Finance Docket No. 30964 (Sub-No. 1), *Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company*
Docket No. 40423, *Increased Switching Charge at Laurel, MS, Southrail*
Docket No. AB–330 (Sub-No. 1), *Otter Tail Valley Railroad Company, Inc., Abandoment—in Stearns, Todd, Douglas and Otter Tail Counties, MN*
Docket No. AB–308 (Sub-No. 1), *Central Michigan Railway Company—Abandonment—East of Ionia to West of Owosso—in Michigan*
Finance Docket No. 30965 (Sub-No. 1), *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company,* [Make-whole period]

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–2834 Filed 2–1–91; 2:07 pm]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 4, 11, 18, and 25, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED: .

Week of February 4

Friday, February 8

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 11—Tentative

Tuesday, February 12

1:30 p.m.
Annual Briefing on Medical Use of Byproduct Material (Public Meeting)

Friday, February 15

10:00 a.m.
Briefing on Reactor Operator Requalification Program (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 18—Tentative

Friday, February 22

10:00 a.m.
Briefing on Committee to Review Generic Requirements (CRGR) Process (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 25—Tentative

Wednesday, February 27

10:00 a.m.
Briefing by NARUC on Economic Performance Incentives (Public Meeting)

Thursday, February 28

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

Dated: January 31, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–2850 Filed 2–1–91; 2:51 pm]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:57 p.m. on Tuesday, January 29, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Frank E. Maguire, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: January 29, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–2760–Filed 2–1–91; 12:43 p.m.]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 2:00 p.m. on Tuesday, February 5, 1991 to consider the following matters:

Summary Agenda

A. *Memorandum re:*
RTC Policy and Procedures for RTC Employee Interaction with Public Officials.

Discussion Agenda

A. Memorandum re:
RTC Policies on Financing Real Estate Sales.
B. *Memorandum re:*
RTC Operating Plan and Projected Funding Requirements for January 1,, 1991 to September 30, 1991, and the Administrative Expense Budget for January 1, 1991 through December 31, 1991.
C. *Memorandum re:*
Revisions to the RTC's Indemnity Agreement for Standard Asset Management and Disposition Agreements (SAMDA) to include coverage for Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282).

Dated: January 29, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-2761 Filed 2-1-91; 12:43 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 3160 January 28, 1991]

STATUS: Closed.

PLACE: 450 Fifth Street NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, January 23, 1991.

CHANGE IN THE MEETING: Deletion:

The following item was not considered at a closed meeting on Tuesday, January 29, 1991 at 2:30 p.m.

Opinion.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Edward Pittman at (202) 272-2400.

Dated: January 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-2816 Filed 2-1-91; 12:52 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 24
Tuesday, February 5, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

RIN 0580-AA09

Shiplot Inspection Plan (Cu-Sum)

Correction

In the issue of Thursday, November 1, 1990, on page 46131, in the first column, in the correction of rule document 90-11957, in the first line numbered 1, "§ 800.86(a)(2)" should read "§ 800.86(c)(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[C-331-601]

Certain Fresh Cut Flowers From Ecuador; Preliminary Results of Countervailing Duty Administrative Review

Correction

In notice document 90-1310 beginning on page 1974 in the issue of Friday, January 18, 1991, make the following correction:

On page 1975, in the 1st column, in the paragraph under **BACKGROUND**, in the 11th line, "January 1, 1989" should read "January 1, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

RIN 1880-AA49

Education Department General Administrative Regulations

Correction

In rule document 91-971 appearing on page 1698 in the issue of Wednesday, January 16, 1991, make the following correction:

In the first column, under "**FOR FURTHER INFORMATION CONTACT**", in the last line, the telephone number should read "(202) 708-5580".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 91-1859 appearing on page 3098 in the issue of Monday, January 28, 1991, make the following corrections:

1. In the second column, the *Agreement Number* should read "232-011316".In the same column, at the end of the document, the FR Doc. number should read "91-1859".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 104, and 105

[Docket Nos. 85N-0061, 84N-0153, 90N-0134, 90N-0135, and 90N-0165]

Food Labeling; Health Messages and Label Statements; Definitions of the Terms Cholesterol Free, Low Cholesterol, and Reduced Cholesterol; Reference Daily Intakes and Daily Reference Values; Mandatory Status of Nutrition Labeling and Nutrient Content Revision; Serving Sizes

Correction

In proposed rule document 91-630 beginning on page 1151 in the issue of Friday, January 11, 1991, make the following correction: On page 1151, in the 2nd column, in the 12th line, "(FRV's)" should read "(DRV's)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90D-0439]

Furazolidone and Nitrofurazone in Animal Feed; Compliance Policy Guide; Removal

Correction

In notice document 91-638 appearing on page 1197 in the issue of Friday, January 11, 1991, make the following correction:

In the second column, under "**SUPPLEMENTARY INFORMATION**", in the second line, "7125.12" should read "7125.13".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[BPD-724-IFC]

Medicare Program; Medicare Coverage of Screening Mammography

Correction

In rule document 90-30399 beginning on page 53510 in the issue of Monday, December 31, 1990, make the following correction:

§ 410.34 [Corrected]

On page 53522, in § 410.34(b)(4)(ii), in the second column, in the third line, "11 months" should read "23 months".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-323]

Certain Monoclonal Antibodies Used for Threrapeutically Treating Humans Having Gram Negative Bacterial Infections; Investigation

Correction

In notice document 91-2168 beginning on page 3484, in the issue of Wednesday, January 30, 1991, make the following correction:

On page 3484, in the third column, in the heading, the Investigation Number was ommitted and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 90-054]

RIN 2115-AD64

Pollution-Prevention Requirements of Annex V of MARPOL 73/78

Correction

In proposed rule document 91-422 beginning on page 824 in the issue of Wednesday, January 9, 1991, make the following corrections:

1. On page 825, in the first column, in the first paragraph under **Request for Comments**, in the sixth line "identity" should read "identify".

2. On the same page, in the third column:

a. Under **Discussion of Proposed Amendments**, in the fourth line "151.51" should read "§§ 151.151".

b. In the second paragraph under **Regulatory Evaluation**, in the third line, "imnplementing" should read "implementing".

c. In the first paragraph under **Small Entities**, in the ninth line "tha" should read "that".

§ 151.53 [Corrected]

3. On page 826, in the second column, in § 151.53(f)(2), in the third line "57°44' N" should read "57°44.8' N".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 26151; Amdt. No. 93-61]

High Density Traffic Airports Allocation of International Slots at O'Hare International Airport

Correction

In the issue of Thursday, January 10, 1991, on page 1059, in the second column, in the correction of rule document 90-30160, the correction numbered 3 should read as follows:

"3. In the same paragraph, in the fourth line from the end, 'on' should read 'one'."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8326]

RIN 1545-AP08

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer

Correction

In rule document 91-30361 beginning on page 53295 in the issue of Friday, December 28, 1990, make the following corrections:

1. On page 53295, in the third column, in the second line, "issue" should read "issuance".

2. On the same page, in the same column, in the first full paragraph, in the third line "LR-3-84" should read "LR-3-85".

BILLING CODE 1505-01-D

federal register

Thursday
February 5, 1991

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 158

Passenger Facility Charges; Notice of Proposed Rulemaking and Meeting

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Notice No. 91-4; Docket No. 26385]

RIN 2120-AD87

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes new regulations to implement a passenger facility charge program. This proposal is intended to implement the Aviation Safety and Capacity Expansion Act of 1990 which requires the Department of Transportation to issue regulations under which a public agency may be authorized to impose an airport passenger facility charge (PFC) at a commercial service airport it controls. The proceeds from such PFC's are to be used to finance eligible airport-related projects that preserve or enhance capacity, safety or security of the national air transportation system, reduce noise from an airport which is part of such system, or furnish opportunities for enhanced competition between or among air carriers. The proposed rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection and remittance of PFC's by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC.

DATES: Comments must be received on or before March 7, 1991. Because of the 180-day statutory deadline for completion of this rulemaking by May 3, 1991, the FAA will not be able to entertain requests for extensions of the comment period. However, late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26385, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proceeding by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impacts that might result from adopting the proposals in this notice are also invited. Comments should identify the docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26385." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NRPM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NRPM.

Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Aviation Safety and Capacity Expansion Act of 1990 (Pub. L. 101-508), enacted November 5, 1990, authorizes the Secretary of Transportation to approve locally imposed PFC's of up to $3 per enplaned passenger. Section 9110 of the Act requires the Secretary to issue regulations necessary to implement this authority, "Not later than 180 days after the date of enactment."

The statute also directs the Secretary to: develop an application procedure; establish the terms and conditions for granting of PFC authority; set up a system to collect, handle, and remit PFC revenues to the appropriate public agency; and establish recordkeeping and audit requirements and procedures for termination. It also defines project eligibility, establishes user consultation procedures, prohibits PFC collection in certain circumstances and prohibits the treatment of PFC revenue as airport revenues for establishing rates, fees, or charges.

The FAA has had extensive experience in developing application requirements for various airport grant programs, dating from the initial Federal Aid to Airports Program in 1946 to the current Airport Improvement Program (AIP). Although PFC approval would not be subject to many Federal grant requirements associated with the AIP, the proposed rule would establish general application procedures, data requirements, procedures for compliance with environmental requirements and for obtaining airport layout plan approval that resemble current grant processes. Public agencies that would apply for approval of PFC authority would almost always be or have been participants in the Federal airport grant program. Adopting similar procedures would minimize the introduction of unfamiliar terms and requirements for FAA and public agency officials working on both PFC applications and on requests for grant assistance. The approach will be especially beneficial for projects funded by a combination of PFC revenue and airport grants.

The collection of fees by air carriers and foreign air carriers is another major section of this proposed regulation. Although these carriers currently collect the passenger taxes, customs and immigration fees, and an international departure tax, these fees are remitted to the U.S. Treasury. The FAA has no direct involvement with their handling, collection and remittance other than being advised as to the total amounts collected.

Because of this lack of extensive prior involvement, FAA published Notice No. 90-28 (55 FR 47483; November 14, 1990) requesting data and information on the collection of existing fees. The objective was to learn more about current practices to design a PFC collection system. In all, 13 commenters responded to this request for data and provided information useful in preparing the proposed rule. The comments are available for inspection in the FAA Rules Docket, No. 26385.

Discussion of Proposal

Many sections of the proposed rule are the direct result of specific statutory requirements; in others, where discretion has been given to the Secretary to develop procedures, several different approaches could be taken to satisfy a requirement of the Act.

These choices are discussed and comments invited in the preamble. The following is a summary of some of the questions or issues raised on which the FAA would particularly welcome comments. The numbers in parentheses refer to related sections of the proposed rule.

1. Definitions (§ 158.3).

Within this section particular attention is directed to the following three definitions:

Involuntary and voluntary change in itinerary. It is reasonable to try to distinguish between voluntary and involuntary changes in itinerary to determine which airports receive PFC revenue?

Long-term lease. Is 5 years an appropriate term for a long-term lease? Are additional safeguards needed in leases to ensure that the purpose of the Act is furthered with respect to enhancing air carrier competition?

One-way trip. Is the "4-hour rule" an acceptable way to define when a trip ends?

2. Requirements prior to submission of application (§ 158.23). How else might these requirements be satisfied? Can they be streamlined or made less burdensome?

3. Consultation with air carriers and foreign air carriers (§ 158.25), remittance of PFC's (§ 158.49), and recordkeeping and auditing (§§ 158.67 and 158.69). Should all air carriers (scheduled, domestic, commuter, foreign, charter, and air taxi) be subject to the same consultation, collection, handling, recordkeeping, and auditing requirements or should passengers of some category or categories of carriers be exempt from paying a PFC?

4. Application (§ 158.27). Are any of the proposed application requirements unnecessary or redundant? Are there ways to streamline the application? Is the AIP an appropriate model for the PFC application process?

5. Amendment of approved PFC (§ 158.31). Is the proposed amendment procedure adequate? Are there other more appropriate criteria to determine when consultation is needed?

6. Use of excess PFC revenue (§ 158.35). Are there other reasonable uses for PFC revenue collected in excess of project needs? What oversight by air carriers or the FAA is necessary?

7. Remittance of PFC's (§ 158.49). Should the transporting carrier, rather than the issuing carrier, be responsible for collection and remittance? Is the proposed twice-monthly remittance schedule satisfactory?

8. Collection Compensation (§ 158.51). Are there other manageable standard methods to determine a fair compensation for handling PFC revenue by the air carriers?

9. Reporting requirements (§§ 158.63 and 158.65). Are the level of detail and frequency of reports appropriate for public agencies and issuing carriers?

10. Termination of authority to impose a PFC (§ 158.83). Is there some appropriate additional safeguard in the termination process that would be necessary for a public agency to secure reasonable and stable financing for projects?

11. Implementation of reduction (§ 158.95). Is the timing for the reduction of apportionments reasonable? Are there other ways to project PFC revenue for a fiscal year?

12. Application of departmental policy on price advertising (following section-by-section discussion of proposed rule). Will the tentative decision on air carriers' price advertising provide consumers with adequate information about the total costs of planned and alternative air travel arrangements? Are there other effective ways to provide air travellers with cost comparison information for air travel via different routes or air carriers?

The following discussion provides more information about each section of the proposed rule and explores each of the above questions in greater depth.

Subpart A

This subpart proposes general provisions including definitions, the authority for imposing PFC's, limitations, use of PFC revenue, and project eligibility.

Section 158.3 Definitions

While developing the proposed rule, it became necessary to define a number of terms that either have not been used by the FAA and public agencies in airport-related programs, that have been used without a standard definition, or have been used differently in this context than previously. We highlight some of those terms here to focus the attention of commenters. Of course, the FAA will consider comments on all the proposed definitions.

Airport capital plan: The FAA recognizes that most municipalities and public agencies currently have agency-wide capital plans. Many agencies also have airport-specific capital plans to more effectively implement and manage needed airport development. The NPRM proposes to require public agencies to submit airport capital plans to the FAA to help ensure that the proposed project is, in fact, part of a rational long-term development program. If a public agency has not formulated or adopted a formal capital plan for an airport, the agency would be required to submit the best available documentation of planned capital improvements at the airport.

Airport layout plan: This is the same airport layout plan (ALP) as is currently required by AIP grant assurances. It will aid in identifying the status of any environmental, air navigation, safety or airport design reviews.

Airport revenue: Passenger facility charges, like Federal grant funds, are not to be used in determining landing fees or other airport charges. However, the revenue generated by facilities built with PFC financing would be considered airport revenue under the AIP grant assurances and could not be used off-airport except for noise mitigation projects. We assume that virtually every public agency that would apply for approval to impose a PFC is or has been a grant recipient and is, therefore, subject to AIP assurances.

Allowable costs: Allowable costs would be defined as those that are the "reasonable and necessary" costs of accomplishing an eligible project. Some costs related to a PFC-financed project may not be allowable costs for the use of PFC revenue. However, the FAA will rely on the public agencies' local laws, procurement requirements, and procedures in determining what costs are reasonable and necessary. If a project is financed entirely with PFC revenue or other local funds, the statute does not appear to require the FAA to conduct the kind of detailed review of project cost normally associated with the AIP program. The statute does, however, require the FAA to determine that projected PFC revenues are sufficient to cover reasonable and necessary expenses of proposed projects. Therefore, the FAA would be prepared to undertake an independent review of costs in the case of disputes between interested parties and public agencies that cannot be resolved under local procedures. Even then, however, the review of allowable costs would not be at the same level of detail as review of AIP projects.

Involuntary change in itinerary: The FAA recognizes that at times an air carrier will change a passenger's flight itinerary for various reasons such as flight delays, overbooking, and equipment problems. This change may

result in routing the passenger through different airports with different PFC's. In fairness to the passenger, the FAA believes that the passenger should not be obligated to pay any additional PFC's due to involuntary changes in itinerary but rather would pay those associated with the original ticket. Conversely, the passenger should not be entitled to any PFC refunds as a result of such a change in itinerary. The PFC's collected would be distributed as shown on the passenger's original ticket. The FAA uses the term "involuntary change in itinerary" to describe changes in the itinerary that are beyond the passenger's control.

Voluntary change in itinerary: In contrast to involuntary changes in itinerary, the FAA recognizes that there will be times when the passenger requests a change in itinerary that may result in different PFC's. In cases where the change is requested by the passenger, rather than the air carrier, the passenger would be expected to pay any additional PFC's, as well as receive refunds of PFC's omitted as a result of the changed itinerary only if shown on a reissued air travel ticket. PFC's would be distributed to public agencies in accordance with such tickets. These types of changes are described as "voluntary changes in itinerary."

The FAA recognizes there may be some problems associated with designating changes in itinerary as "voluntary" or "involuntary." For example, it may be difficult for an issuing air carrier or an auditor to determine which type of change is applicable months after it occurred. In addition, if a ticket is reissued for an involuntary change in itinerary, there may be no record of which airports would be entitled to receive PFC revenue. Therefore, the FAA seeks specific comments on the concept of voluntary and involuntary changes in itinerary as well as any suggestions on how changes in itinerary should be handled. Additional information about the frequency of such changes in itinerary with respect to the number of air travel tickets sold and the costs of administering this proposal could be particularly useful.

Long-term lease or use agreement: The statute states that "* * * no project carried out through the use of a fee * * * may be subject to an exclusive long-term lease or use agreement of an air carrier * * *." The statute does not define a specific number of years as constituting a long-term lease or use agreement in connection with the PFC program. In connection with the program established by section 9109 of the Act to designate certain current or former military airports for additional AIP funding eligibility, however, the statute contains an explicit prohibition on Federal funding of gates "subject to long-term leases for periods exceeding 10 years[.]" One interpretation of this phrase is that there is no prohibition on long-term leases which do not exceed 10 years. The 10-year timeframe applies only to a prohibition with respect to the military airport designation program and need not be construed to define the concept of "long term." In keeping with the statute's objective of promoting airline competition, the FAA is proposing that "long term" be defined as a period of 5 years or more. This is the same as is used for disadvantaged business enterprise programs under the AIP grant assurances. Inasmuch as there appears to be some discretion in this matter, however, the FAA solicits comments on whether a different timeframe should be used in connection with the PFC program.

Another aspect of the limitation on long-term leases as highlighted by the Government Accounting Office (GAO) in its recent report, Passenger Facility Charges Represent a New Funding Source for Airports (Report Number GAO/RCED-91-39). The GAO expressed concern regarding the extent to which PFC-financed facilities actually encourage greater competition among and between air carriers at an airport. It is possible, for example, that an incumbent air carrier having a long-term exclusive lease at an airport passenger terminal could lease new PFC-funded terminal facilities and, by underutilizing both its exclusive-use and new facilities, severely limit opportunities for enhanced competition.

The GAO also noted instances in which air carriers have used "carryover" lease provisions to extend their tenancy for several years following the expiration of the original lease. Under such an arrangement, an air carrier could operate under a short-term lease as if it were a long-term lease and effectively limit potential opportunities for enhanced competiton.

The FAA is proposing three provisions to preclude these potentially anticompetitive situations. The first would be incorporated into an application for approval to impose a PFC to finance a project for terminal development, including gates and related areas. A public agency would be required, under § 158.27(g)(3), to describe what factors, if any, currently operate to limit competition at the airport, the steps it proposes to take to foster increased opportunities for air carrier competition in the PFC-financed facilities, and the anticipated effects of the proposal.

The second and third would be incorporated into one of the assurances (Assurance number 8 in Appendix 2) agreed to by the public agency, also at the time of application. In Assurance 8a, the public agency would agree that it would not enter into any lease agreement for PFC-financed facilities if the agreement contains a "carryover" provision allowing an incumbent carrier to continue operating on year-to-year extensions after the original lease has expired in preference to any potentially competing air carrier that seeks to negotiate for access to the PFC-financed facilities.

Finally, in Assurance 8b, a public agency that, having previously entered into an exclusive lease or use agreement with an air carrier for existing facilities at the airport, now contemplates leasing PFC-financed facilities to that carrier would be required to incorporate a safeguard in that lease to ensure competitive access to the airport. This provision would prevent an incumbent air carrier from occupying new PFC-financed facilities while underutilizing exclusive-use facilities to which other, potentially competing, carriers cannot gain access.

The FAA is mindful of the concern expressed by the GAO and invites comments on the issue of ensuring that air carrier practices do not thwart progress toward the goal of using PFC-financed facilities to enhance air carrier competition. Commenters are encouraged to suggest specific measures that might be considered and any appropriate means by which such measures could be instituted.

One-way trip: The statute limits the number of times a PFC can be imposed on a passenger for a one-way trip (two PFC's) and for a round trip (two PFC's each on the outward-bound and return portion). However, the statute defines neither kind of trip.

For most journeys, it will be easy to classify a trip as one-way or round-trip. For complex itineraries, it may be difficult to properly classify the journey, and in the case of a round trip, identify where the outbound portion of the trip ends and the return portion begins. However, the FAA does not believe that Congress intended this difficulty to subject passengers on these journeys to pay an unlimited number of PFC's.

The proposed rule addresses this problem based on a suggestion by the Airport Operators Council International and American Association of Airport Executives in response to Notice No. 90-

28. The proposed rule would define a one-way trip as a flight from an originating airport to another airport, including intermediate airports and carriers where no scheduled layover between connecting flights exceeds 4 hours. According to the airport groups, this "4-hour rule" is one that the airlines use when pricing complex travel itineraries. The proposed rule would permit no more than two PFC's to be imposed and collected on each one-way trip shown on an air travel ticket.

Most readily identifiable one-way tickets will likely involve a single one-way trip as so defined, and only two PFC's could be imposed. The FAA anticipates that the instance in which a true one-way trip would be classified as two would be very few and would arise only in the case where infrequent service between two points produces scheduled layovers of more than 4 hours. Similarly, most "true" round trips would be classified as two one-way trips on an air travel ticket and, under the proposed rule, both the outbound and return portions would be subject to a maximum of two PFC's. Again, the FAA recognizes that some travelers (especially business travelers) may be able to complete their stay at a destination city and board a return flight in less than 4 hours.

The initial decision on how many one-way trips are included on a passenger's air travel ticket would be made at the time of ticket issuance. Any change in itinerary that affected the number of one-way trips would be subject to the rules on voluntary or involuntary changes.

The 4-hour rule may not perform perfectly in the case of all readily identifiable one-way and round trips. The alternative was to attempt 100 percent accuracy in these cases and to adopt a special rule for "unclassifiable" unusual itineraries. However, the FAA was unable to develop a workable generic rule for these special itineraries. The FAA solicits comments on whether a different approach to the limit on PFC's per trip should be used.

Public agency: This definition of public agency typically includes cities, counties, port authorities, States, and agencies of one or more States. These kinds of agencies are typically eligible to receive Federal airport grants. It does not include private owners of airports nor public entities that do not control commercial service airports.

Section 158.5 Authority for Imposition of PFC's

This section would state the authority of the Administrator to permit a public agency to impose a charge on each revenue passenger enplaned. The charge can only be $1, $2, or $3, and not fractional amounts such as $1.50, or $2.75 or an amount greater than $3. This charge must be uniform among all of an airport's passengers. Public agencies, could not single out a type of operator, for instance, air taxis or charter operators, and charge their passengers a different amount.

Section 158.7 Exclusivity of Authority

Section 158.7(a) restates the statutory provision that "no State or political subdivision or agency thereof which is not a public agency controlling a commercial service airport shall prohibit, limit, or regulate the imposition of fees by the public agency pursuant to this subsection, collection of such fees, or use of revenues derived therefrom." Section 158.7(b) also restates a statutory limitation.

Section 158.9 Limitation Regarding Passengers of Air Carriers Receiving Essential Air Service Compensation

The Act specifically places a limitation on imposing a PFC on any passenger on a flight for which EAS compensation is being paid to an eligible point. The limitation would not apply to passengers on unsubsidized flights, if any, to an eligible point. Also, it would apply only on flights to the eligible point, so the public agency could impose a PFC on passengers enplaning at an eligible point.

The proposed rule would require the carrier receiving compensation to notify its agents and other issuing carriers so those carriers would know on which flights passengers were not to be charged a PFC. The FAA believes this would be the most efficient way to make this notification. The proposed rule does not prescribe a notification procedure. The FAA expects that this information would be provided by EAS carriers in the same way that they provide other information on ticketing and fares to their agents and interline partners.

Section 158.11 PFC Limitation Per One-Way Trip

The Act provides that a passenger cannot be charged "* * * on a one-way trip and on a trip in each direction of a round trip, after the second enplanement * * *." This proposed section would allow PFC's to be collected for only the first two airports that impose a PFC for each one-way trip shown on the air travel ticket.

Section 158.13 Limitation Regarding Involuntary Change in Itinerary

This section would not allow an airport to impose a charge on a passenger who was routed through the airport because of some change in itinerary beyond the control of such passenger. This could occur when an air carrier routes a flight through a different airport to avoid bad weather.

Section 158.15 Use of PFC Revenue

This section describes how all PFC revenue must be used for eligible projects. PFC revenue in this context would include interest earned on revenue while on deposit with the public agency. (Note that, under proposed § 158.67, public agencies would be required to hold PFC revenue in interest-bearing accounts until needed to pay project costs. PFC revenue remitted to public agencies by air carriers and interest earned on such revenue may be used only on eligible PFC-financed projects.) Such revenue can finance the entire allowable cost of a project or can service the debt incurred to carry out an eligible project. The financing costs associated with issuing a bond, such as legal fees, and other incidental expenses, are also eligible. Revenue could be used to service debt incurred before PFC authority is granted under this proposed regulation, but only if work on the project has not yet commenced. This limitation is proposed for two reasons. First, for approval to collect PFC revenue, the FAA must determine that the revenue will be used to finance an eligible project in accordance with the requirements of the Act and the proposed regulation. Second, the purpose of the Act is to finance new projects, not pay off debt from earlier completed projects.

As proposed, revenue could not be used to pay the local share of an AIP project, although the objectives of both programs are similar, because to do so would reduce the total funds potentially available for airport-related projects. The proposed regulation would, however, permit airports to combine PFC revenue and AIP grant funds to accomplish an eligible project. In such a case, the public agency would have to separately account for the funds so that the AIP work and funds used could be tracked independently for audit purposes. I should be noted, however, that PFC revenue spent on projects or portions of projects would not be reimbursable under a Federal airport grant.

The FAA seeks comment from interested parties on the proposed uses and limitations on the use of PFC revenue. Commenters are encouraged to submit qualitative or quantitative descriptions of the benefits or costs that may be associated with suggested changes in the allowable uses of PFC revenue.

Section 158.17 Project Eligibility

The Act clearly states what types of projects would be eligible for use of PFC revenue. The proposed regulation restates the statutory provisions with some additional explanation for noise compatibility projects and for projects to construct gates and related areas. Noise compatibility measures could be the recommendations contained in a program developed under 104(c) of the Aviation Safety and Noise Abatement Act (ASNA) of 1969 or could be the result of other analysis that demonstrates noise reduction or the mitigation, reduction, or prevention of noise impacts to the satisfaction of the Administrator. A public agency could demonstrate such effects as part of an airport master plan or an environmental study. In most instances some form of noise exposure map as described in 14 CFR part 150 would be necessary to establish the relationship of noise levels to the mitigation measure. Consistent with eligibility under the AIP, mitigation projects beyond the Ldn 65 noise contour would not be eligible without specific justification.

Gates and related areas are proposed to include both the revenue and nonrevenue portions of the terminal. The intent would be to permit PFC revenue to be used to build new terminals and gates and the necessary support facilities to move passengers and baggage, such as baggage handling and make-up areas. This would exclude facilities not directly related to the movement of passengers and baggage, such as restaurants, car rental facilities or other concessions. Eligible facilities could not be leased on a long-term basis.

Eligible projects would not include work outside the airport boundary, except noise compatibility projects. For instance, PFC revenue could not be used for highways leading to an airport unless such highways were on rights-of-way owned by the airport. However, other facilities on the airport such as road systems or intermodal transit stations primarily serving airport passengers could be eligible projects.

Subpart B

This subpart specifies the proposed procedures to be followed and the supporting documentation to be submitted to the FAA by public agencies applying for authority to impose a PFC. It also describes the procedures and criteria that would be used by the FAA in reviewing applications to impose a PFC.

An underlying assumption in proposing these procedures is that the public agencies submitting applications for PFC's will, with rare exception, also be airport sponsors under the Airport Improvement Program (AIP). Those public agencies are generally familiar with the features of the grant program, including sponsor and project eligibility, application procedures, FAA grant approval and project accomplishment. In addition, airport sponsors are accustomed to early and continued coordination with FAA Airports offices on a variety of airport-related matters.

The framework of this well-established process, therefore, has been adopted as the model for PFC application and approval. Because imposition of a PFC entails Federal approval, there are a number of requirements that must be satisfied by a public agency and the FAA prior to approval of an application. The procedure set forth in the proposed regulation is intended to minimize the burden on public agency applicants and to permit timely review and a decision within the statutory 120-day limit.

Nevertheless, the FAA does not wish to impose regulatory burdens that are unnecessary for the PFC program. Therefore, the FAA specifically invites comments on the assumption that PFC applicants will almost always be participants in the AIP program. Comments are also invited on the suitability of the AIP program as a model for the PFC application and approval process. The FAA is especially interested in comments concerning the utility, or lack thereof, of particular provisions adapted from the AIP program.

Section 158.23 Requirements Prior to Submission of Application

There are three independent but related actions that may be required with respect to a project or projects to be financed with PFC revenue before an application to impose the PFC can be approved: Environmental studies may be required for both airport-related and noise compatibility projects; airspace studies would have to be completed for airport-related projects and, potentially, for off-airport noise compatibility projects; and an airport layout plan (ALP) depicting the project or projects, if located on the airport, must be approved by the FAA. Planning projects, whether for airport development or noise compatibility purposes, are excluded from the requirement for environmental and airspace studies and an approved ALP.

These actions may require a substantial period of time to complete. If initiated concurrent with or subsequent to submission of an application to impose a PFC, there is little likelihood that they would be completed within the 120-day time limit for an FAA decision with respect to the application. Therefore, rather than be compelled to reject an application because critical actions are incomplete, or to give conditional approvals that may be essentially meaningless if environmental or airspace studies require a substantial modification to a project, the FAA proposes in § 158.23 that a public agency ensure that any required studies, findings or determinations related to the proposed project be complete prior to submission of an application.

There are two aspects of the environmental considerations related to this NPRM. One, the potential environmental impacts resulting from adoption of the rule itself, is discussed later in this preamble. The other, the potential impacts of individual projects implemented with PFC revenue, is discussed in the paragraphs immediately below.

The Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) which implement the National Environmental Policy Act of 1969 (NEPA) appear to cover the type of Federal approval contemplated in this proposed rule. For example, at 40 CFR 1508.18(a), a Federal action is defined to include programs that are approved by Federal agencies and implemented by others. In addition, the regulation requires, at 40 CFR 1508.7, that a Federal agency consider the cumulative effects of a proposed action and the consequences of any subsequent related actions, regardless of which party implements such actions. Finally, 40 CFR 1508.25 indicates that when considering the scope of a Federal action, connected actions must also be considered. A connected action is one that cannot or will not occur if another action has not occurred before or at the same time. Where a proposed project would not be implemented without further funding made possible by the Federal approval of a PFC, implementation of the PFC project would be a connected action under the CEQ regulation.

Consequently, with regard to decisions on individual applications to impose a PFC, the FAA has tentatively determined that such decisions are Federal actions subject to the requirements of NEPA. This determination is based on the explicit linkage between PFC approval and project implementation in the Act, including the necessary condition that PFC revenue be used for specified airport-related or noise compatibility projects. Approval of an application to

impose a PFC, therefore, is inseparably linked to implementation of a specific project.

It should be noted that detailed environmental analysis is not always required to satisfy the NEPA requirements. The FAA has previously determined that, barring any extraordinary circumstances, noise compatibility projects and several types of airport development projects are normally categorically excluded from the requirement for environmental study. Other airport development projects require an environmental assessment (EA) and either a finding of no significant impact (FONSI) or, if the EA indicates that impacts may be significant, an environmental impact statement (EIS).

It is also important to note that, for projects that require an EA, the FAA is required to make a finding of no significant impact or to prepare an EIS and record of decision. Under CEQ regulations, responsibility for these actions cannot be delegated to a local public agency. The procedure set out in § 158.23(a) describing this process applies to approval of PFC-financed projects for airport-related development or for noise compatibility projects off the airport.

The FAA does not anticipate that the NEPA requirements discussed above will be noticeably burdensome to public agencies seeking approval to impose a PFC. This is because States and local governments often require environmental review prior to approval of any locally-implemented project. In addition, several types of projects are categorically excluded from the NEPA requirements as discussed above. Finally, environmental review is often completed in conjunction with the FAA review of a new or revised airport layout plan. Such review and approval of an ALP is normally required before a public agency proceeds with any new construction on a public airport, whether or not Federal funds are involved. This is a well established procedure and, in the FAA's view, would entail no new requirements for public agencies seeking approval to impose a PFC. (The airport layout plan review procedure is more fully discussed below.)

Notwithstanding the FAA's preliminary determination that approval of an application to impose a PFC is a Federal action under NEPA, interested parties are invited to provide their opposing views. Any comments to consider PFC-related actions outside the scope of NEPA would be strengthened by a relevant legal analysis, including applicable court rulings. The FAA also invites comments on the view that NEPA requirements can be satisfied without any noticeable additional burden on public agencies.

The FAA also conducts airspace studies of proposed projects on an airport and of other projects in the vicinity of an airport that exceed certain height limitations. The purpose of these studies is to determine the effects of the proposed projects on the safety and efficiency of the navigable airspace. The proposed procedures for ensuring completion of airspace studies for PFC-financed projects are set forth in § 158.23(b).

Preliminary airspace studies of planned projects on an airport are usually conducted in conjunction with review of an ALP as described below; more detailed airspace studies are often required when a project is imminent and its dimensions and orientation are known. The result of an on-airport airspace study is the approval of a revised ALP if the construction is acceptable, with or without a change in the original proposal, or the disapproval of the revised ALP if the proposed construction cannot be made acceptable.

Any party who proposes construction, including a noise compatibility project, in the vicinity of an airport is required under 14 CFR part 77 to file a notice of proposed construction with the FAA if the project would exceed certain height limits. The FAA conducts an obstruction evaluation study of any proposal that exceeds specified screening criteria and issues its determination of the effects of the project on the navigable airspace to the proponent. The determination may object to the proposal ("objectionable determination") as a hazard to air navigation, or it may state that the FAA does not object to the proposal.

The FAA determination is neither an approval nor disapproval of the proposal. If the proponent is a public agency, however, and the project is proposed to be financed with PFC revenue, an objectionable determination could serve as the basis for disapproval of an application to impose a PFC. It should be noted that a proposed PFC project off the airport for noise compatibility is unlikely to require an airspace study and even less likely to result in an objectionable determination by the FAA.

The FAA views the need for airspace studies to be a current requirement, whether or not a PFC program is established and that it imposes no new burden on public agencies. Interested parties are invited to comment on this view, however, and to offer suggestions for streamlining this process.

The third requirement under this proposed section is the FAA approval of an airport layout plan. An airport sponsor currently assures, as a condition of receiving AIP grant funds, that it will keep up to date an ALP approved by the FAA. The ALP depicts all existing improvements and facilities on the airport as well as those proposed to be constructed or installed. The depictions should be in sufficient detail to permit the FAA to evaluate the effect of any change or alteration in the airport or its facilities with respect to the safety, utility or efficiency of any Federal property or investment in the airport. Under the proposal, the ALP approval would extend to on-airport projects to be financed with PFC revenue, as it does to other locally financed projects, and all prerequisites would have to be met for FAA approval of an ALP depicting those projects before an application to impose a PFC could be approved.

Under existing procedures, an ALP that is submitted for FAA review is evaluated against several criteria, including the degree to which proposed improvements are in accordance with airport design standards, the environmental impacts of the proposal, and the effects of the construction on the safe and efficient use of navigable airspace and the airport. Additionally, the airport layout plan review process provides an early awareness of projects which may require relocation of FAA facilities. As directed by FAA Order 6030.1A, FAA Policy and Facility Relocations Occasioned by Airport Improvements or Changes, and pursuant to AIP grant assurances, the public agency is required to pay the costs of such relocation. Early coordination of PFC projects to assure consistency with the ALP could serve to minimize such costs for public agencies.

Environmental and airspace studies receive particular attention during the ALP review process, whether the proposed improvements are to be accomplished with Federal grant assistance or solely with nonfederal funds, including PFC revenue. An ALP may be approved unconditionally if these studies have been completed for all proposed development shown on the plan, or the ALP may be approved conditionally pending the completion of more detailed studies for specified projects as described in the preceding paragraphs.

In most cases, a conditional approval indicates the need for further environmental studies. The FAA, in its ALP approval letter, notifies the airport sponsor of the projects which cannot proceed until the additional studies are

complete. All projects not limited by the conditional approval may proceed at the will of the sponsor.

As with environmental and airspace studies, the FAA proposes that review and approval of an ALP be complete, with respect to proposed PFC-financed projects on the airport, prior to the submission of an application by a public agency to impose a PFC. The provisions of § 158.23(c) are intended to summarize the process for ensuring timely approval of an ALP when required.

The FAA believes that the requirements in § 158.23 are necessary for approval of an application to impose a PFC, and the procedures set forth therein are intended to minimize delays in the approval process. The FAA invites comments on the degree to which the proposed procedures would be a burden to public agencies, alternatives to the proposed procedures, and any alternative means by which the intent of this section could be achieved.

Section 158.25 Consultation With Air Carriers and Foreign Air Carriers

The Act states that "* * * a public agency shall provide reasonable notice to and an opportunity for consultation with air carriers operating at that airport * * *" and that, at a minimum, the public agency must provide written notice of the project to, and meet with, air carriers and foreign air carriers operating at the airport. The Act specifies that air carriers acknowledge receipt of notice not later than 30 days after the notice is issued and that the public agency conduct a meeting not later than 45 days after the notice. The statute further requires that air carriers certify agreement or disagreement with the project within 30 days after the meeting. The Act makes no specific provision exempting any carrier, foreign or domestic, from application of this section or the section regarding collection and remittance.

The procedures proposed by the FAA in § 158.25 would require that, to the extent practicable, all air carriers, including air taxis, operating at the airport be notified and consulted. Reasonable notice in this context is defined as written notice sent by registered mail to each air carrier and foreign air carrier regularly operating at the airport. This may be supplemented by a public notice in a local newspaper of general circulation, aviation trade journals, and local airport newsletters.

The FAA recognizes that public agencies may incur substantial costs and realize minimal benefits, and that small air taxi operators could also incur unreasonable costs, if the final rule were to extend this notification requirement to all air carriers without exception. For example, there are over 6,000 on-demand air taxi firms that meet the technical definition of an air carrier, but that are not required to report revenue passenger enplanements to the Department of Transportation. Further, some charter air carriers operating under 14 CFR part 121 only provide service to sports teams or air travel clubs, and may serve many airports irregularly. Similarly, foreign charter operators may irregularly serve many airports.

While it is apparent that some of these carriers add significantly to the number of passengers enplaned at certain airports, it appears that a substantial number of small air carriers enplane far fewer than 1,000 passengers annually. In addition, an air taxi operator based at one airport may operate infrequently at another, making notification and meaningful consultation difficult.

The FAA, therefore, invites comments regarding the extent to which the notification and consultation requirements should be applied to all air carriers under the assumption that even the smallest air taxis are subject to the collection, remittance, and record keeping requirements, or whether there is some reasonable criterion for establishing a threshold for application of the proposed requirements to provide individual written notice. Commenters are particularly encouraged to provide estimates of the financial benefits and costs for public agencies to notify and consult with such carriers; suggestions for what constitutes "reasonable" notice and consultation for a potentially large number of small air carriers; and the means by which a public agency can notify and consult meaningfully with small air carriers located at other airports.

Section 158.27 Application

This proposed section specifies the information and documentation, including an application form depicted in appendix A and public assurances set forth in appendix B, that the FAA believes are reasonably necessary to evaluate an application to impose a PFC to finance a project. The process is similar to that already in place for AIP projects, although the application materials requested are substantially less than for a grant.

The FAA is proposing two provisions related to the timing of the imposition of a PFC. The first, in paragraph (c), would require that an application not be submitted more than a year in advance of when the PFC charge would begin. This is intended to ensure that the conditions prevailing at the time of the application, and on which the FAA's evaluation would be based, accurately reflect the conditions which prevail when the PFC is actually imposed. The purpose of paragraph (d), which would require work to proceed no later than 2 years after the charge effective date, is to prevent the imposition of a PFC substantially ahead of the date by which the project is expected to begin. This would help ensure that the project for which the PFC was approved could proceed essentially as planned, and would avoid the build-up of excessive PFC revenue surpluses.

Other information and documents requested are self explanatory and should be readily available to public agencies. Note that an ALP, project sketch and airspace determination may not be required for some projects.

Public agency assurances are contained in the proposed appendix B. These are also modeled after sponsor grant assurances in the AIP, although the number of assurances has been reduced substantially. Because PFC revenue is considered to be nonfederal funds, a number of requirements related to the use of Federal funds are not needed.

The FAA invites comments on the extent to which these requirements may be redundant or unnecessary and suggestions for simplifying and streamlining the application package. Commenters are also encouraged to suggest other methods for ensuring that the record on which FAA bases its decision is adequate to satisfy the intent of the Act.

Section 158.29 Review and Approval Process

This section details the steps that would occur between the filing of an application and the Administrator's final decision. This level of detail is intended to ensure that all parties (public agencies, carriers an the traveling public) understand the procedures to be followed by the FAA and that they know what is expected of them and the FAA, including the time allowed for each step of the review and approval process.

The first step is to determine whether the application is substantially complete. This is needed to address the 120-day deadline for the Administrator's decision. If the rule does not provide for the Administrator to suspend processing of incomplete applications, operation of the statutory deadline could force the Administrator to rule on the merits of the application without adequate information.

The proposed rule would provide 30 days for the Administrator to decide whether or not the application is substantially complete. To be substantially complete, an application would not need to be "letter perfect." The FAA has no intention of using minor defects to justify unnecessary delay in review and approval of a PFC application. An application would be considered substantially complete if the information is sufficient to allow the Administrator to decide if a proposed project is eligible for PFC financing, that its environmental impacts, if any, are disclosed, that the project will not derogate the safety, efficiency, or capacity of the airport or the national airspace system; and that the projected PFC revenue does not exceed the amount necessary to finance the project.

If an application is substantially complete, the process for review would be straight-forward. The Administrator would publish a notice in the **Federal Register** that briefly outlines the project and requests public comment. The **Federal Register** notice procedure is intended to satisfy the statute's requirement that the Administrator provide notice and opportunity for comment before deciding an application.

The Administrator would provide a copy of the notice to the public agency, which would be required to make it, along with a copy of the application and supporting materials, available for public inspection upon request at the airport where the proposed PFC would be imposed. At the public agency's option, it may publish a copy of the notice in a local newspaper. Newspaper publication would not be required, but the FAA would encourage this form of notification to enhance local citizens' awareness of the application and of the opportunity to provide comments to the FAA.

Proposed § 158.29(e) would require comments to be filed not later than 30 days after the notice is published in the **Federal Register**. To avoid confusion, the proposed rule would also permit carriers to resubmit, as comments to the FAA, their written comments in the local consultation process. Carriers would not be required to do so, however.

Proposed § 158.29(f) would authorize the Administrator to request additional information if it is necessary. While the FAA does not expect this provision to be used often, it was included in the proposed rule to reduce the risk of uncertainty and of disputes between the FAA and public agencies as individual PFC applications are reviewed. A request for additional information under this paragraph would not change the statutory deadline for the Administrator's decision.

After reviewing the application, comments, and any other information obtained as outlined above, the Administrator would issue a final decision within 120 days after the substantially complete application was filed. Proposed § 158.29(g) would specify the standards for approval of a PFC application, based on the requirements of the statute.

For an incomplete application, the decision process would involve more steps. The FAA, however, has tried to develop a process that minimizes the burden on local airport operators and that reduces the potential for delay in processing the application at the Federal level.

Under proposed § 158.29(c)(1), the Administrator would first notify the public agency that its application is not substantially complete and list the information necessary for a complete application. At this stage, the application would not be dismissed or rejected, but held in abeyance by the Administrator. The public agency would have 15 days to notify the Administrator that it intends to supplement the application or that it wishes the Administrator to make a decision based on the application as originally submitted.

The FAA considered the option of dismissing incomplete applications outright, but believes that it would be less burdensome on public agencies to file a supplement to their application than to refile an entirely new application. Also, the FAA determined that a public agency should have the option of seeking a decision on the merits of such incomplete applications without filing further supplements. In this regard, the 15-day time limit is not the time limit for a public agency to file a supplement. All that is required is that the pubic agency decide whether it will file a supplement and so advise the FAA. This 15-day time limit is necessary to allow the FAA to decide the merits of an unsupplemented application under the 120-day time limit.

If the public agency advises that it will not supplement an application, the **Federal Register** notice and comment procedures outlined in connection with substantially complete applications would be followed. After a review of the full record, the Administrator would issue a final decision within 120 days of the date the application was first received in the FAA Airports office.

Applications that are not substantially complete will be decided on their individual merits. However, only applications with significant substantive omissions would be classified as not substantially complete. It is, therefore, anticipated that most such applications, if not supplemented, would be denied on the merits.

If the public agency decides to supplement its application, no further action would be taken until a supplement is filed. At that point, the Administrator would review the completeness of the application as supplemented within 30 days after receipt. If the supplemented application is substantially complete, the notice and comment procedures outlined earlier would be followed before the Administrator issued a final decision. The 120-day deadline would run from the day FAA Airports office received the supplement to the application. A request for further information after comments are received under paragraph § 158.29(f) would not change the statutory deadline.

If the supplemented application is still not substantially complete, the Administrator would advise the public agency and provide an opportunity for a further supplement, following the procedures outlined above. In theory, this process could be repeated a number of times until the public agency's application was substantially complete or the public agency chose not to file any further supplements. In practice, however, the FAA Airports office would work closely with the public agency to help assure that the first supplement produces a substantially complete application in most instances.

In any event, once the Administrator determined that no further supplements would be received, the notice and comment procedures would be followed. The Administrator's final decision would be due 120 days after receipt of the last supplement filed by the public agency under proposed § 158.29(c)(4), and a request for supplemental information under § 158.29(f) would not alter the statutory deadline for decision.

Section 158.31 Amendment of Approved PFC

The FAA expects that public agencies may from time to time need to revise a project's scope of work, its cost, or the PFC expiration date. This section proposes that such amendments be evaluated in an abbreviated procedure if the change is minimal, and that a more thorough procedure, including additional air carrier consultation, be followed if the change is substantial. One proposed criterion for separating requested amendments into the two categories is an increase of 15 percent or more in PFC revenue to be collected. Other changes in the project that would alter its

original scope or character would also require the more detailed procedure.

A decision regarding approval of a minor amendment would ordinarily be issued within 30 days of receipt by the Administrator. A significant amendment would be reviewed and a decision rendered within the 120-day limit applicable to original applications.

Interested parties are invited to comment on the adequacy of the proposed amendment procedures. The FAA is particularly interested in other criteria that could be used to categorize such requests. Commenters are encouraged to suggest alternatives that provide satisfactory notice and opportunity for comment to air carriers in the event of a major change in the project.

Section 158.33 Duration of Authority To Impose a PFC

The FAA believes that this proposed section is self-explanatory. Note, however, that the authority to impose a PGC would terminate if the public agency is found by the Administrator to have violated section 9304(e) of the Airport Noise and Capacity Act of 1990. This provision is required by the terms of section 9304(e). Future rulemaking pursuant to section 9304(e) will set forth the procedures for notice and termination of a PFC upon such a finding.

Section 158.35 Use of Excess PFC Revenue

Public agencies may, from time to time, complete PFC projects and terminate collection of the PFC as planned and find that excess funds have been collected or that interest accrued on the funds while on deposit have generated an unanticipated excess. Such an occurrence is to be distinguished from that in which the Administrator makes a determination under subpart E that revenue collected from a PFC is excessive or is not being used as approved.

The FAA has proposed that such funds be retained and accounted for by the public agency and be used on future projects that are eligible under § 158.17 after consultation with the Administrator. The proposed rule is designed to reduce the chance of inadvertent excess collections and to limit the amounts that would be accumulated before collection stops. Public agencies would not be allowed to use such funds for operating or maintenance costs.

Interested parties are invited to submit their views with respect to other allowable uses for excess PFC revenue that arises in these circumstances. Comments should address costs and benefits that may accrue to the airport or airway systems as a result of such use.

Subpart C

Subpart C proposes requirements for providing notice of the imposition of PFC's, and for collecting, handling and remitting PFC's. This subpart was designed to allow as much flexibility as possible to the public agencies and the air carriers and foreign air carriers while still maintaining adequate protection for each party involved.

Section 158.43 Public Agency Notification to Air Carriers and Foreign Air Carriers

Each public agency authorized by the Administrator to impose a PFC would be required to give written notice to air carriers and foreign air carriers operating at its airport of the requirement to collect the PFC. Carriers would be responsible for notifying their agents, including other issuing carriers, of the PFC and of any requirements associated with the PFC. Public agencies are in the best position to communicate with the scheduled and unscheduled air carriers and foreign air carriers that operate at its airport.

The proposed effective date of the PFC would be no sooner than 30 days after notification to the air carriers and foreign air carriers. This would allow such carriers adequate time to notify agents, make appropriate adjustments in fare structuring, software and database programming and establish necessary accounting records. Because carriers are now able to make fare changes throughout the month, the FAA believes that public agencies should have flexibility to permit PFC collection to begin after appropriate notice to air carriers and foreign air carriers rather than only on specific days of the month, e.g., the first or fifteenth. Public agencies and carriers are encouraged to discuss and arrive at mutually convenient charge effective dates.

Section 158.45 Collection of PFC's

Once notified, an issuing carrier, or its agent, would be required to collect a PFC on all air travel tickets sold on or after the charge effective date for all passengers enplaned at the airport. Air travel tickets would be required to show the PFC imposed at each airport and the total PFC paid by the passenger. As required by statute, no PFC's would be collected after the passenger has paid two charges on a one-way trip. No PFC would be collected when the passenger is being provided air service for which essential air service (EAS) compensation is being paid and the passenger is flying to an EAS eligible point, or if a passenger's travel to the airport charging a PFC is because a carrier or its agent has made an involuntary change in the passenger's itinerary. In the latter case, the PFC would be paid as originally specified on the ticket. The issuing carrier or its agent is responsible for collecting the PFC and may not issue tickets unless the appropriate PFC is collected.

Under the proposal, all PFC's would be collected and remitted by the issuing carrier as noted on the ticket. This would eliminate the need for interline settlement of PFC's. The FAA believes that interline settlements would be more cumbersome for the air carriers and foreign air carriers than requiring issuing carriers to account for charges collected from passengers other than their own. When the carrier identified as the issuing carrier on the ticket is not the carrier that enplanes the passenger at the airport imposing the PFC, the issuing carrier would be treated as the agent of the enplaning carrier. Travel agents would also be agents of the enplaning carrier.

Section 158.47 Handling of PFC's

Each air carrier and foreign air carrier responsible for collecting PFC's would be required to account for PFC charges separately in accordance with Generally Accepted Accounting Principles.

Section 158.49 Remittance of PFC's

The Act requires that PFC revenue be promptly paid to the public agency by air carriers and foreign air carriers, less a uniform amount determined by the Secretary as reflecting average necessary and reasonable expenses incurred in collection and handling of fees. The rule proposes that revenue collected by the issuing carrier or its agent within the first 15 days of a month would be remitted to the public agency by the 15th day of the following month. Revenue collected within the second half of the month would be remitted by the end of the following month. Air carriers would thus be allowed to retain PFC revenue for a maximum of 45 days. The FAA seeks comment on the frequency of remittance to public agencies.

Section 158.51 Collection Compensation

Under the proposal, the issuing carrier collecting the PFC would be entitled to retain any interest it may earn on PFC revenue from the time of collection to the time of disbursement as a service fee for collecting, handling, disbursing and auditing. Data on the administrative costs of collecting other existing fees submitted by air carriers in response to

Notice No. 90–28 was not sufficient to formulate a method of compensation based on such costs.

In lieu of a cost-based methodology for calculating air carrier compensation, the FAA is proposing to allow air carriers the use of the "float" as compensation to accomplish the statutory directive that air carriers receive compensation for collecting and handling PFC's. For instance, under the remittance schedule in the proposed rule, carriers would hold PFC revenue for an average of approximately 38 days. If interest were accrued at 10 percent per year and all revenue were collected in the form of $3 PFC's, the interest earned by a carrier would be about 3 cents per PFC collected.

Allowing an issuing air carrier to retain the interest gained on the revenue between collection and disbursement appears to be the most straightforward, would provide a carrier with maximum flexibility in managing the funds and would minimize specific Federal regulation of the funds. The FAA seeks comments on this method of establishing the service fee and on the period of time the air carrier would retain the revenue before disbursement to the public agency. In particular, the FAA would need to know how it could determine what expenses are necessary and what fees are reasonable. Proponents of a specific fee level should be prepared to explain the costs (especially administrative costs) and benefits of such an approach to the carriers and to public agencies.

In addition, the FAA believes that there may be one-time startup costs for air carriers when a public agency first imposes a PFC. Interested parties are, therefore, invited to suggest other means of compensation to cover such startup costs for air carriers, consistent with the requirement in the statute that the compensation reflect the "average necessary and reasonable" costs of collection. It may be possible, for example, to authorize a longer float at each airport for a limited period of time after the public agency initiates the PFC. Commenters are encouraged to provide any actual or estimated cost data related to the collection, handling and remittance of similar charges.

Subpart D

This subpart proposes requirements for reporting, recordkeeping and auditing by the issuing carrier and the public agency.

Section 158.63 Reporting Requirements: Public Agency

The proposed reporting requirements are considered the minimum needed to allow the Department of Transportation to fulfill its auditing responsibilities. None of the reports are of a recurring nature. Instead, they are reports of milestones indicating when a project begins, advance notice of project completion, and when PFC revenue totals 90 percent of the approved amounts. It is also proposed that notice be given when there are substantial deviations in the approved project. These particular reports are intended to minimize the likelihood that a public agency will collect excess PFC revenue. They could also signal that a public agency needs to amend its PFC collection and such reports could be submitted in conjunction with an amendment request.

Interested parties are invited to suggest alternative means to avoid the accumulation, by either collection or accrual of interest on deposits, of excess PFC revenue as well as suggestions for additional or less reporting requirements. Commenters are encouraged to provide any data on the cost or burden related to such suggestions.

Section 158.65 Reporting Requirements: Issuing Carrier

Issuing carriers collecting PFC's would be required to file quarterly reports to a public agency providing an accounting of funds collected and disbursed to the public agency, unless an alternative schedule is agreed to by the issuing carrier and the public agency. This is consistent with the required frequency of reporting collections of the passenger ticket tax collected by air carriers. As proposed, reports would include specific information, such as the total number of passengers enplaned for the period, the number enplaned who were exempt from collection under this regulation, the number who purchased tickets prior to the imposition of the PFC, and PFC revenue collected and remitted to the public agency but subsequently refunded to passengers by the air carrier or foreign air carrier. As proposed, the reports would be required to specify the enplaning carrier and to be filed by the last day of the month following the calendar quarter or other period agreed to by the issuing carrier and public agency for which funds were collected. For example, a report covering the months of January, February, and March would be due on or before April 30. The FAA seeks comment on these reporting requirements for both public agencies and issuing carriers and in particular whether the level of detail and frequency are appropriate. Comment is also invited on whether the information that would be provided to public agencies by the proposed quarterly air carrier reports would be adequate if submitted only annually in conjunction with the report discussed below under § 158.69.

Section 158.67 Recordkeeping and Auditing: Public Agency

A public agency imposing a PFC would be required to establish and maintain an accounting record in accordance with Generally Accepted Accounting Principles for all approved projects from the time collection begins for the PFC until the time all funds are expended. Each public agency would be required to provide for an independent audit annually of each project financed with PFC revenue. A copy of the audit would be provided on request to each issuing carrier disbursing PFC revenue to the public agency and to the Administrator.

Section 158.69 Recordkeeping and Auditing: Issuing Carriers

Issuing carriers would also be required to establish and maintain an accounting record of PFC revenue collected in accordance with Generally Accepted Accounting Principles and to provide for an independent audit of all PFC accounts annually. A copy of the audit would be provided on request to the public agency for which the PFC revenue was collected and to the Administrator.

Section 158.71 Federal Recordkeeping and Auditing Oversight

Pursuant to the Act, in addition to the independent audits, the NPRM would also authorize the Administrator to periodically audit and review the use of revenue by a public agency to ensure compliance with the requirements of this regulation and the Act.

Under the terms of the statute, and as reflected in the NPRM, the collecting, handling, and reporting requirements apply to all air carriers including the smallest charter carriers and on-demand air taxis. The FAA seeks comment, and the basis for any proposals, on whether the proposed requirements for collecting, handling, disbursing and auditing should be applied equally to all air carriers, including non-scheduled carriers such as charter operators and on-demand air taxis, at an airport imposing a PFC. For example, an air carrier or foreign air carrier enplaning 10 passengers a month would collect a maximum of $30 a month. Commenters are urged to focus on the cost to collect, disburse, and audit PFC revenue and the degree to which such costs may exceed the amount of funds collected.

If the final rule limits the issuing carriers required to collect PFC's, options could include: (1) Limiting collection to carriers carrying more than a specified number of passengers; (2) limiting collection to certain categories of carriers; (3) reducing the regulatory requirements for some carriers; or (4) allowing small non-scheduled carriers and the public agency to negotiate mutually agreeable requirements.

Based on the terms of the statute, the proposals for collecting, handling, disbursing and auditing in this NPRM would also apply equally to all foreign air carriers affected by the law. In response to Notice No. 90-28, the International Air Transport Association advised that several countries prohibit the collection within their territories of taxes or fees imposed by other countries. Foreign air carriers, however, are currently collecting and disbursing a number of taxes or fees, including the 8 percent ticket tax and $6 international passenger departure tax, customs user fees and immigration user fees. At this point, therefore, we do not anticipate an exclusion of foreign air carriers from the requirement to collect PFC's. Nevertheless, the FAA seeks comments on whether there should be different requirements for foreign carriers, or for those foreign carriers with limited U.S. sales. Alternative options with regard to foreign air carriers include, among others: (1) Limiting collection required to those carriers carrying more than a specified number of passengers; (2) reducing regulatory accounting, reporting, and remitting requirements; or (3) allowing foreign carriers and the public agency to agree to specific requirements.

Subpart E

Subpart E addresses termination for cause. The Act provides that, to the extent the Secretary determines that revenues are not being used in accordance with this regulation, the authority to impose a PFC may be terminated. The Act also provides that the Secretary may set off such amounts otherwise payable to the public agency under AIP as may be necessary to ensure compliance with this regulation.

Section 158.83 Termination of Authority To Impose PFC's

If a problem is discovered during the audit or review described in subpart D, the Administrator would first enter into an informal resolution with the public agency, and any other affected party. The FAA expects informal resolution to be sufficient in almost all cases.

If informal resolution is not reached, the Administrator would begin action to terminate PFC authority by publishing a notice in the Federal Register. The notice would describe the reasons for the proposed termination, would ask for comments, and would offer the public agency the opportunity to request a hearing. The notice would also describe corrective actions to forestall termination and would give the public agency 30 days to take such action or agree to do so. The proposed period for any comments, including those from the public agency, is 30 days after the notice date. During this period, the public agency's authority to impose the PFC would continue. If the agency took corrective action, the termination action would be withdrawn.

Under the proposal, if the public agency requested a hearing, no final decision would be made by the Administrator until after the public hearing. The decision in a termination proceeding could be to terminate in whole or in part the authority to impose a PFC or to allow full continued authority. Authority would only be terminated if PFC revenue is not being used in accordance with this regulation or section 1113(e) of the FAA Act (49 U.S.C. App. 1513).

The Administrator would publish a notice in the Federal Register advising of the termination action and would also notify all air carriers and foreign air carriers operating at the airport. A copy of the notice would be provided to the public agency. The carriers that were notified would be responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA. To establish which carriers must be notified, the proposed rule would require public agencies, within 10 days of the date of the termination notice in the Federal Register, to provide the FAA a list of carriers operating at the airport. This would include air carriers, foreign air carriers, and all issuing carriers that have collected PFC revenue at the airport in the preceding 12 months.

The Administrator would terminate PFC authority only after all other recourse is considered. However, the possibility of such a termination could potentially affect the marketability of bonds and interest rates paid by public agencies when a PFC is a source of revenue to finance a bond issue. The FAA seeks comment on appropriate ways to minimize any potential disruption in the market for airport bonds.

Section 158.85 Loss of Federal Airport Grant Funds

Under the proposal, if the Administrator determines that a PFC imposed by a public agency is excessive or that revenue derived from the PFC is not being used in accordance with this regulation or the Act, the Administrator may also reduce AIP funds by the amount collected in excess of approved amounts or not used in accordance with this regulation or the Act. This provision in the proposed rule implements section 9110(12)(c) of the Act.

Subpart F

Proposed subpart F explains the circumstances under which funds apportioned under the Airport Improvement Program would be reduced to public agencies that control certain airports and that impose a PFC, and the procedure for implementing such reductions.

Section 158.93 Public Agencies Subject to Reduction

Under section 9111 of the Act, funds apportioned under section 507(a)(1) of the Airport and Airway Improvement Act of 1982, as amended, based on passenger enplanements (not cargo landed weight) will be reduced at commercial service airports which impose a PFC and enplane 0.25 percent or more of total annual enplanements in the United States (large and medium hubs). There are currently 71 airports in this category. Apportionments for all other commercial service airports would not be reduced under this provision.

The proposed regulation would reduce the apportionment on an airport-by-airport basis rather than on the amount apportioned to a public agency for all airports controlled by the agency. If a public agency controls more than one airport, the reduction in apportionment would be calculated for each airport separately. The FAA is proposing the selected approach because apportionments are calculated based on passenger enplanements on an individual airport basis.

Section 158.95 Implementation of Reduction

The proposed rule would reduce apportionments at large and medium hubs in the fiscal year following the date of PFC application approval. The apportionment in the fiscal year of approval would not be reduced. This approach was chosen for ease of administration by public agencies and the FAA. Another approach would be to prorate the amount of reduction based on the percentage of days remaining in the fiscal year after application approval. This could require adjustment of AIP multi-year grants including changes in grant work scope, and produce a constantly fluctuating small

airport fund under section 9112(d) of the Act. However, the disadvantage to the selected approach is that public agencies could try to time PFC application approval early in the fiscal year, thus retaining all apportioned funds and receiving PFC revenue for most of the fiscal year. The FAA seeks comments on timing of apportionment reductions.

The amount of the reduction would equal 50 percent of the PFC revenue forecast for the fiscal year, except the maximum reduction would not exceed 50 percent of the amount otherwise apportioned based on passenger enplanements. A public agency would not lose more than one-half of its expected apportioned funds. The reduction in apportioned funds would be calculated at the beginning of each fiscal year based on projected PFC revenue for the year. Projected revenue could be based on an annual submission by the public agency or by simply multiplying the PFC level ($1, $2 or $3) by the enplanements used for calculating AIP apportionments. The annual calculation of AIP apportioned amounts would reflect the reductions caused by PFC revenue. Comments are invited on this and other methods that may be used to calculate such reductions.

The proposed regulation would provide for adjustments in reductions to reflect actual results should forecasts prove inaccurate or should the charge expiration date change. The adjustment would occur in the apportionment calculation for the following year, except that the total reduction would not exceed 50 percent of the otherwise apportioned amounts.

Application of Department Policy on Price Advertising

Department of Transportation policy statements on airline economic activity specifically address airline price advertising. Under 14 CFR 399.84, the Department considers it to be an unfair or deceptive practice for any airline advertising to state a price for air transportation, unless the stated price is the entire price to be paid by the passenger. The advertising of prices for air travel that may be subject to PFC's appears to fall within the scope of this policy statement.

In 1985, the Department, by order, exempted carriers from the policy with respect to the 8 percent ticket tax and $6 international passenger departure charge. The exemption permitted air carriers to advertise an air fare price net of these charges so long as the charges were separately stated in the advertising. As the number of Federal user charges and locally imposed fees on airline passengers grew, the Department, through successive orders, expanded and clarified its 1985 exemption. The most recent order, Order 88–8–2, was declared invalid in *Alaska* v. *Department of Transportation*, 868 F.2d 441 (DC Cir. 1989), on the grounds that the Department had engaged in substantive rulemaking without providing notice and opportunity for comment. The Department has not finished its rulemaking proceeding to amend the policy statement.

Pending completion of that rulemaking, however, under the *Alaska* decision, *supra*, the policy statement appears to require that advertised airline prices include any PFC's that might be collected. Such a requirement would make price advertising very difficult and potentially costly and confusing. A round-trip between the same origin and destination points could have at least three different prices (and possibly more), depending on whether a carrier offered a choice of direct routings and routings over alternate intermediate connecting points with different PFC amounts. If a PFC varied with the time of day, the passenger's ultimate cost could also vary with the time of departure from an originating airport or, for that matter, from an intermediate point.

To alleviate this problem, the Department tentatively has decided to allow carriers to state separately that "up to $12 per round trip in local airport charges may be collected in addition to the advertised price" in order to satisfy 14 CFR 399.84. Comments are invited on the Department's tentative resolution of this issue.

Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this proposal have been submitted to Office of Management and Budget for review. Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs, New Executive Office Building, room 3208, Washington, DC 20503; Attention: FAA Desk Officer (Telephone (202) 395–7340). A copy should be submitted to the FAA docket.

Environmental Issues

Congress directed the Secretary to promulgate final rules for implementation of the PFC program within 180 days after enactment of the PFC legislation. The rule would have nationwide application and the environmental consequences of PFC funded projects could vary substantially from airport to airport. In FAA's view, the 180-day time limit is far too short for the FAA to prepare an environmental assessment, obtain public comments, prepare a full environmental impact statement if adoption of the PFC rule were found to have a potential for significant impact on the quality of the human environment, and to engage in notice and comment rulemaking to produce a completed final rule.

In addition, it should be noted that the statute authorizes local imposition of PFC's, subject to Federal approval. The proposed regulations would not themselves authorize or cause any PFC to be collected or cause a PFC project to be started, let along completed. Rather, they would merely establish procedures governing FAA approval and local implementation of approved PFC projects.

The environmental consequences, if any, from this regulation would seem to be those associated with specific projects and not with the adoption of procedural requirements for Federal approval and local implementation of projects. A PFC-financed project can be implemented only after FAA approval of an application to impose a PFC for a specific project. FAA approval of such applications, therefore, would include appropriate environmental review of individual projects under the provisions of proposed subpart B, as discussed above.

At this time, the FAA has tentatively concluded that Congress by setting a statutory limit on the length of the rulemaking process, did not intend the adoption of procedural regulations for implementing the PFC program to require the full environmental review procedures called for in the National Environmental Policy Act. Additionally, the FAA is of the view that the adoption of these procedural rules will not significantly affect the quality of the human environment or set in motion actions that would not otherwise be governed by the applicable environmental review requirements. Rather, it is believed that any potential environmental impacts resulting from projects financed with revenue derived from a PFC will be fully disclosed in connection with the review of an application to impose such PFC.

Nevertheless, the FAA wishes to fully consider the potential environmental consequences of the proposed regulation and invites public comment on any associated environmental issues. The FAA intends to prepare a final environmental assessment of the proposed PFC regulation and will consider all substantive comments before deciding whether to approve a

finding of no significant impact or to prepare an environmental impact statement.

Regulatory Evaluation Summary

This summary discusses the anticipated benefits and costs associated with implementing the Notice of Proposed Rulemaking (NPRM) which is based on section 9110 of the Airport Safety and Capacity Expansion Act of 1990 (the Act). The preliminary regulatory evaluation prepared by the FAA provides more detail on the economic consequences of this regulatory action. In addition to a summary of the preliminary regulatory evaluation, this summary also contains the initial regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact assessment. It is available for review in the docket.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a regulatory impact analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for consumers or for individual industries, government entities, or regions; or a significant adverse effect on competition, employment, or other signficiant determinants of economic growth.

Under the Act, the Administrator is authorized to approve applications by public agencies to impose PFC's. The Federal government has discretion only over the procedures governing the application for and approval of PFC authority and the collection, handling, and use of PFC revenue. In addition, PFC revenue will be generated only as a consequence of a State or local initiative to impose a PFC. Finally, all such revenue accrues to the public agencies, not the Federal government. Therefore, although the total annual revenue raised by passenger facility charges (PFC's) could easily exceed the $100 million per year threshold, the FAA, for the reasons noted above has tentatively determined that this rule is not "major" as defined in the executive order. Consequently, the requirement of the Act is satisfied by a regulatory evaluation, rather than a full regulatory impact analysis.

There appears to be some discretion allowed in determining the categories of air carriers that will be required to collect, handle, remit, and report PFC's. The FAA is soliciting comment on the appropriateness of requiring all categories of air carriers to handle PFC's. This issue will be resolved only after receipt of information from the public in response to this NPRM. Therefore, a more complete analysis will be prepared later.

Benefits and Costs of PFC-Funded Projects

This evaluation examines the impact of a notice of proposed rulemaking (NPRM) that provides rules under which the FAA would allow public agencies that control airports to impose PFC's. The proposed rule would require that the air carriers collect these charges and remit them to public agencies that control commercial service airports. PFC revenue may be used to fund investments in various types of eligible projects.

A recent survey of airports indicated that total public spending on capital improvements, including items not eligible for Federal aid, was $4.5 billion in 1989. (The FAA and others have estimated that future investment needs for airport expansion, including work not eligible for Federal grants, will continue at that level or more for the next 5 to 10 years.) PFC revenue of $1 billion per year could, therefore, finance 20 to 25 percent more in airport capital investment. The benefits and costs of these projects are discussed below.

Capacity expansion. A major purpose for which PFC revenue may be used is the expansion of airport capacity on both airside and landside. Such investments can be expected to reduce airport delays. Some indication of the magnitude of the potential savings can be derived by noting that, for 1987, the total airside delay costs associated with the 100 largest airports in the U.S. have been estimated to be on the order of $11 billion. Landside delays, including those associated with on-airport roads and terminals would add significantly to the total of airport-related delays that were experienced.

A significant investment of PFC revenue for capacity expansion can be assumed to reduce airport-associated delay time. The benefits of capacity expansion vary with specific projects, but computer simulations for airport capacity planners have consistently shown very favorable benefit to cost ratios for major projects such as new runways. For example, if 20 percent of the estimated airport investments (about $1 billion per year) were to reduce passenger airport delays by 10 percent, the value of time savings would be about $1.1 billion per year and the PFC-funded projects would yield benefits in excess of costs. Further, it is likely that the delay reductions from funding 20 percent of the desired investments would be in excess of 10 percent of current delays for two reasons. (1) Airport operators would have an incentive to make the best use of their new revenue by selecting as their investments the projects that have the greatest incremental benefits for the funds spent. (2) A large amount of this development will probably occur at the busiest airports, which are also the most congested and in greatest need of expansion.

Noise mitigation. The FAA estimates that approximately $1.8 billion will be spent for noise mitigation or other environmental projects over the next 10 years. PFC revenue could be used to fund these noise mitigation projects. Like delays, noise impacts most often occur at the busiest airports. For example, 57 percent of the cost of noise mitigation projects planned over the next 10 years is concentrated at the 29 busiest primary airports.

When PFC's fund projects that benefit noise-impacted individuals, the investment (e.g., for soundproofing of existing structures or the purchase of impacted real estate) can be thought of as compensation to those individuals who have incurred an indirect cost of air travel. By financing these projects, travelers who pay PFC's are, in effect, reducing a subsidy that has been—or would otherwise be—involuntarily provided to them by noise-impacted individuals. Whether the avoided costs of noise pollution are less than the costs incurred for abatement can be estimated only on a case-by-case basis. To the extent that noise mitigation expenditures respond to expressed public concerns, there is an incentive to give priority to the projects that yield the greatest net benefits.

The availability of substantial PFC revenue is expected to facilitate investments in noise mitigation projects. Detailed benefit/cost analyses are problematical, however, because of the difficulty of fully expressing benefits in monetary terms. Individual projects, however, are carefully developed, analyzed, and discussed by public agencies and noise-impacted individuals to produce projects that address serious public concerns.

Enhanced competition among air carriers. Projects that furnish opportunities for enhanced competition between or among air carriers may be funded with PFC revenue. Benefits that may be conferred upon PFC payers as a

result of enhanced competition are likely to be in the form of lower air fares and/or improved service that arise from the construction of gates at an airport that allow new entrants/new competition in a travel market. Such benefits to travelers are highly dependent on the policy followed by any new entrant and the reactions of competing carriers. For instance, a new entrant may offer significantly lower fares but be so constrained by the limited amount of available airport space that it is unable to increase its operations to the extent that other carriers are induced to lower their fares in order to compete. In the limiting case of a single dominant carrier and a small new entrant carrier, the dominant carrier may perceive that there is little to be gained by lowering fares. As a result, a new entrant may substantially duplicate existing fares and service. Lower fares are believed to be more likely in cases where the new entrant is able to provide substantial competition with incumbent carriers. Potential gains to passengers could result from increased competition at airports that are largely dominated by single carriers.

In the event that the use of PFC revenue, for instance for the construction of gates, results in enhanced competition and lower air fares at an airport, air carriers may suffer a reduction in profits. However, if the resulting lower prices result in a reduction in profits, much of the loss in profits is likely to become a benefit that is transferred to passengers. In addition, there may be a higher level of travel service provided so that the combined consumers' and producers' surplus for the airport will be increased.

Funds shifted to smaller airports. Section 9111 of the Act requires that sponsors of airports that annually have more than 0.25 percent or more of total annual enplanements in the U.S. will have their Airport Improvement Program entitlement funds reduced by 50 percent of their projected PFC revenue—up to 50 percent of this entitlement. The funds released from entitlements to these large and medium hub airports are to be used under Section 9112 of the Act as follows: 25 percent for a discretionary fund of which half is for small hub airports and 75 percent for a Small Airports Fund for use by general aviation airports and nonhub commercial service airports. It may be argued that the overall national airspace system is improved by (1) The increased capacity at larger airports and (2) increased capacity at smaller airports that would be unlikely to occur in the absence of the diversion of entitlement funds form larger to smaller airports. Sponsors of smaller airports may be unable to finance substantially improved facilities from funds raised at their airports in the absence of funds from outside sources. However, improvements at smaller airports may yield benefits through improved operations at nearby larger airports that the small airport operators are unable to fully capture through increased fees and charges. This can occur because reduced congestion at larger airports may result from the diversion of general aviation traffic to the smaller fields.

Handling of PFC revenue and compensation for these costs. The interest earnings allowed the carriers as compensation for collecting, handling, remitting, and reporting PFC's to the public agencies will vary directly with the revenue remitted and inversely with the frequency with which balances must be remitted to the airport(s). For example, with revenue of $1 billion per year, remittance as specified in the NPRM, and an interest rate of 10 percent, total annual earnings would be on the order of $10 million per year.

It should be noted that, should $1 billion per year be collected in $3 PFC's, 333 million PFC's would be handled. In order for the cost of handling, accounting for, and auditing these charges to be fully compensated for by interest earnings of $10 million per year, costs would have to be on the order of 3 cents per PFC collected. If the costs of handling were found to be higher, it would be appropriate to specify a longer period during which air carriers may earn interest on the PFC float. For instance, if costs were 15 cents per PFC, the required interest earnings would be approximately $50 million per year, which could require a float on the order of 6 months, if interest rates were near 10 percent.

Currently, cost data that would allow the determination of whether this is an appropriate level of compensation are not available to the FAA. It is believed that the handling of fees that are less than some cutoff level may result in costs that are greater than the revenue collected. Appropriate cutoff levels or rules have not been determined at this time. The FAA requests data on collection costs and comments on the availability of alternatives to minimize uneconomic PFC collections. It is believed likely that the monthly costs during the startup of the PFC collection and remittance system will be significantly higher than after the system is in operation.

Additional data are also needed to determine costs of startup in the PFC collection and remittance system, which may be significantly higher than after the system is in operation. Although PFC administration may be simplified by having a single remittance schedule for all carriers and airports, it may be appropriate to allow less frequent remittances for carrier airport pairs that involve low levels of revenue.

During the course of this rulemaking, the FAA will continue efforts to identify and evaluate means of achieving maximum cost-effectiveness, consistent with the requirements of the Aviation Safety and Capacity Expansion Act.

The agency will continue to give particular attention to the costs of PFC administration and informational requirements in Parts C and D, in an effort to ensure that administrative and informational costs and burdens are not excessive (See also the discussion in the Regulatory Flexibility Act determination below.) The FAA strives to maximize the cost-effectiveness of PFC administration while minimizing unnecessary information collection burdens, as consistent with the requirements of the Aviation Safety and Capacity Expansion Act.

The FAA has attempted to structure the proposal so as to achieve maximum cost effectiveness in administration (i.e., in ticketing collection burdens, as well as reporting, recordkeeping and auditing requirements). For example, it is proposed in subpart C that all PFC's be collected and remitted by the issuing carrier, thus eliminating interline settlements. Comments on other means of reducing settlement and accounting burdens are invited.

The FAA also invites comments on implementation, such that the information collection, accounting, auditing and other administrative requirements will be as cost-effective as possible. As noted above with respect to subpart D requirements, the FAA seeks comments on options that could reduce regulatory burdens for carriers and public agencies.

Comments are also thus invited on ways to structure PFC implementation. To this end, the FAA requests information from carriers, public agencies, and other interested persons on relevant start-up costs, such as for software, database programming and establishment of necessary accounting records. The agency is interested in how the specific timing and implementation of the PFC program might affect these costs and ways to minimize them.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or

disproportionately burdened by Government regulations. This Act requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for operators of aircraft for hire for complying with review requirements in FAA rulemaking actions. The lowest of these categories is indicated to be $3,300 per year in 1983 dollars for unscheduled operators of 9 or fewer aircraft. This level is approximately $4,200 in 1990 dollars. Since provisions of the NPRM allow the earning of interest on PFC revenue held in order to compensate carriers for the costs of administering PFC's, the net cost of collecting, handling, remitting, and reporting PFC's for such operators of aircraft should be small. There are numerous charter and air taxi operators that are believed to have 9 or fewer aircraft. Size thresholds, if any, for the application of PfC's and associated remittance schedules will be determined after the receipt of comments on the NPRM. The tentative conclusion that the imposition of PFC's will not have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities may be altered if data are received that clearly indicate such an impact.

The impact of PFC administration costs on small airports is not believed to be a problem, since PFC's are to be initiated by public agencies that control airports. These agencies are assumed to assess a PFC only if they have reason to expect that the revenue collected will be in excess of the cost of establishing the charge and managing the revenue that results.

Trade Impact Assessment

The provisions of this proposed rule are expected to have little or no impact on trade for both U.S. firms (including air carriers) doing business in foreign countries and foreign firms (including air carriers) doing business in the United States. PFC's are not likely to cause a significant increase in costs for most international travel. It is noted that the $3 per airport limitation on PFC's per enplaned passenger and the generally higher cost per ticket for international travel to or from the United States than for domestic travel make PFC's imposed on international travel a smaller proportion of the cost of international travel than domestic travel. Even with the addition of PFC's, departure fees for international travelers at U.S. airports will remain lower than those at many airports in other countries. Although PFC's will raise the amounts paid for tickets for international travel, in many cases, the airport capacity improvements financed with the resulting revenue may result in improvements in the amenities afforded travelers. These improvements may include reduced delay that is made possible by increased airport capacity that more than compensates passengers for the cost of the PFC.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The proposed regulations would implement a new statute that authorizes state and local public agencies that control commercial service airports to impose PFC's at their airports. While the imposition of PFC's would be a local decision, the statute imposes Federal requirements on the airport operator (e.g., the local consultation requirement) and requires Federal oversight (through the approval and audit provisions).

The provisions of the proposed rule are intended to impose on state and local agencies the minimum restrictions and requirements that are mandated by the statute, including the Federal oversight role contemplated by the PFC statute and other legislation or regulations that would pertain to a PFC-financed project (e.g., environmental requirements).

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 158

Administrative practice and procedure, Air carriers, Airport, Air transportation, Passenger facility charge, Reporting and recordkeeping requirements.

The Proposed Amendments

Accordingly, the FAA proposes to establish a new part 158 of the Federal Aviation Regulations, 14 CFR part 158, to read as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC's)

Subpart A—General

Sec.

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158.3 Definitions.
158.5 Authority to impose PFC's.
158.7 Exclusivity of authority.
158.9 Limitation regarding passengers of air carriers receiving essential air service compensation.
158.11 PFC limitation per one-way trip.
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158.15 Use of PFC revenue.
158.17 Project Eligibility.

Subpart B—Application and Approval

158.21 General.
158.23 Requirements prior to submission of application.
158.25 Consultation with air carriers and foreign air carriers.
158.27 Application.
158.29 Review and approval process.
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Subpart C—Collection, Handling, and Remittance of PFC's

158.41 General.
158.43 Public agency notification to air carriers and foreign air carriers.
158.45 Collection of PFC's.
158.47 Handling of PFC's.
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158.61 General.
158.63 Reporting requirements: public agency.
158.65 Reporting requirements: issuing carrier.
158.67 Recordkeeping and auditing: public agency.
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Subpart E—Termination for Cause

158.81 General.
158.83 Termination of authority to impose PFC's.

Sec.
158.85 Loss of federal airport grant funds.

Subpart F—Reduction In Airport Improvement Program Apportionments

158.91 General.
158.93 Public agencies subject to reduction.
158.95 Implementation of reduction.

Appendix A to Part 158—Application Form

Appendix B to Part 158—Assurances

Authority: 49 U.S.C. App. 1513 (as amended by the Aviation Safety and Capacity Expansion Act of 1990, Pub. L. 101–508, title II, Subtitle B, November 5, 1990); 49 U.S.C. App. 2206 (as amended by the Aviation Safety and Capacity Expansion Act of 1990); 49 U.S.C. App. 2218; Section 9304(e) of the Airport Noise and Capacity Act of 1990, Pub. L. 101–508, Title IX, Subtitle D.

Subpart A—General

§ 158.1 Applicability.

This part applies to passenger facility charges (PFC) as may be approved by the Administrator of the Federal Aviation Administration (FAA) pursuant to section 1113(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513(e)) and imposed by a public agency that controls a commercial service airport. This part also describes the procedures for reducing funds apportioned under section 507(a) of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2206(a)) to a large or medium hub airport that imposes a PFC.

§ 158.3 Definitions.

The following definitions apply in this part:

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport capital plan means a capital improvement program prepared and adopted by a public agency that lists airport-related planning, development or noise compatibility projects expected to be accomplished with anticipated available funds over a given period.

Airport layout plan means a plan showing the existing and proposed airport facilities and boundaries in a form prescribed by the Administrator.

Airport revenue means revenue generated by a public airport:

(1) Through any lease, rent, fee, or charge collected, directly or indirectly, in connection with any aeronautical activity conducted on an airport that it controls; or

(2) In connection with any activity conducted on airport land acquired with Federal financial assistance, or with PFC revenue under this part, or conveyed to such public agency under the provisions of any Federal surplus property program or any provision enacted to authorize the conveyance of Federal property to a public agency for airport purposes.

Air travel ticket means all documents pertaining to a passenger's complete itinerary necessary to transport a passenger by air.

Allowable cost means the reasonable and necessary costs of carrying out an eligible project, and includes both costs incurred subsequent to the approval to impose a PFC and project formulation costs incurred prior to such approval.

Charge effective date means the date on which a public agency begins to impose a PFC.

Charge expiration date means the date on which a public agency ceases to collect a PFC as agreed or as directed by the Administrator.

Collection means the acceptance of payment of a PFC by an issuing air carrier or its agent from a passenger.

Commercial service airport means a public airport determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft.

FAA Airports office means a regional, district or field office of the Federal Aviation Administration that administers Federal airport-related matters.

Involuntary change in itinerary means a change in destination, intermediate stops, or scheduled layovers initiated by an air carrier and is beyond the ability of the passenger to control.

Issuing carrier means any air carrier or foreign air carrier that issues an air travel ticket or whose imprinted ticket stock is used in issuing such ticket by an agent.

Long term lease or use agreement means a lease or use agreement with a term of 5 years or more.

One-way trip means the itinerary shown on the air travel ticket of a passenger who travels from an originating airport to another airport, including any enroute change of aircraft or air carrier, where no scheduled layover exceeds 4 hours.

Passenger enplaned means a domestic, territorial or international revenue passenger enplaned in the United States, as defined in the Airport and Airway Improvement Act of 1982 (49 U.S.C. app. 2205(A)(23)) (AAIA), in scheduled or nonscheduled service on aircraft in intrastate, interstate, and foreign commerce and includes passengers on board international flights that transit an airport located in the 48 contiguous States for nontraffic purposes.

Passenger facility charge (PFC) means a charge covered by this part imposed by a public agency on passengers enplaned at a commercial service airport it controls.

Project means airport planning or development work (including gates and related areas at which passengers are enplaned or deplaned), or noise compatibility planning or measures, that are to be undertaken at an airport using PFC funds.

Public agency means a State or any agency of one or more States, a municipality or other political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo that:

(1) Controls a commercial service airport and

(2) Is legally, financially, and otherwise able to assume and carry out the assurance contained in an application for PFC authority and any condition imposed by the Administrator upon approval.

Voluntary change in itinerary means a change in destination, intermediate stops or scheduled layover initiated by a passenger that is shown on a reissued air travel ticket.

§ 158.5 Authority to impose PFC's.

Subject to the provisions of this part, the Administrator may grant authority to a public agency that controls a commercial service airport to impose a PFC of $1.00, $2.00, or $3.00 on passengers enplaned at such airport. A public agency may not impose a PFC under this part unless authorized by the Administrator. No State or political subdivision or agency thereof that is not a public agency will be authorized to impose a PFC covered by this part.

§ 158.7 Exclusivity of authority.

(a) No State or political subdivision or agency thereof may impair the imposition of a PFC, collection of such PFC, or use of revenue derived therefrom by a public agency.

(b) No contract or agreement between an air carrier or foreign air carrier and a public agency may impair the authority of such public agency to impose a PFC under this section and to use the revenue derived therefrom in accordance with this part.

§ 158.9 Limitation regarding passengers of air carriers receiving essential air service compensation.

(a) No public agency may impose a PFC on any passenger on a flight to an

eligible point for which essential air service compensation is being paid under section 419 of the Federal Aviation Act (49 U.S.C. app. 1389).

(b) An air carrier that provides compensated air service under section 419 of the Federal Aviation Act to an eligible point shall ensure that notice of such compensated service is provided to all its agents and other issuing carriers with whom that air carrier has interline ticketing agreements.

§ 158.11 PFC limitation per one-way trip.

For each one-way trip shown on the complete itinerary of an air travel ticket, a PFC may be collected only for the first two airports where PFC's are imposed.

§ 158.13 Limitation regarding involuntary change in itinerary.

No public agency may impose a PFC on any passenger enplaned as a result of an involuntary change in itinerary.

§ 158.15 Use of PFC revenue.

PFC revenue, including any interest earned after such revenue has been remitted to a public agency, may be used only to finance the allowable costs of eligible projects contained in an application approved under this part as follows:

(a) *Total cost.* PFC's may be used to pay the entire cost of an eligible project.

(b) *Debt service.* PFC's may be used to pay debt service on bonds and related expenses and other indebtedness incurred to carry out eligible projects. Such debt service and related expenses may be incurred prior to the approval of the PFC only if the public agency has not yet commenced work on such project.

(c) *Combination of PFC and Federal grant funds.* A public agency may use a combination of PFC revenue and airport grant funds to accomplish an eligible project. Such projects shall be subject to the recordkeeping and auditing requirements set forth in subpart D of this part, in addition to the reporting, recordkeeping and auditing requirements imposed pursuant to the Airport and Airway Improvement Act of 1982 (AAIA).

§ 158.17 Project eligibility.

(a) To be eligible, a project must—

(1) Preserve or enhance capacity, safety, or security of the national air transportation system;

(2) Reduce noise or mitigate noise impacts resulting from an airport; or

(3) Furnish opportunities for enhanced competition between or among air carriers.

(b) Eligible projects are—

(1) Airport development, including land acquisition, eligible under the AAIA;

(2) Airport planning eligible under the AAIA;

(3) Terminal development as described in 49 U.S.C. App. 2212(b);

(4) Airport noise compatibility planning as described in 49 U.S.C. App. 2103(b);

(5) Noise compatibility measures that are eligible for Federal assistance under 49 U.S.C. App. 2104(c), or that are determined by the Administrator to reduce noise or to mitigate or prevent adverse aviation noise impacts; and

(6) Construction of public use, revenue and non-revenue producing, areas where passengers are enplaned or deplaned. Such areas may include public-use loading gates, baggage handling and make-up areas, ticketing areas, security devices, holding areas, waiting rooms, and associated corridors. Construction not directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport, such as restaurants, car rental facilities, or other concessions are not eligible for PFC funding.

Subpart B—Application and Approval

§ 158.21 General.

This subpart specifies the consultation and application requirements to impose a PFC to finance an eligible project. This subpart also establishes the procedure for the Administrator's review and approval of applications and amendments.

§ 158.23 Requirements prior to submission of application.

A public agency that intends to submit an application to impose a PFC, prior to submission of such application shall—

(a) Comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) by—

(1) Consulting with the appropriate FAA Airports office to determine whether such approval shall be the subject of an environmental assessment, or whether approval of this application is an action that is categorically excluded from the requirements for an environmental assessment.

(2) If the project is one that is not categorically excluded, the public agency shall—

(i) Initiate such environmental studies as may be directed by the FAA Airports office pursuant to the provisions of 40 CFR 1500, *et seq.*;

(ii) Provide the FAA Airports office with an environmental assessment of the proposed project in sufficient detail to determine whether a Federal finding of no significant impact or an environmental impact statement shall be prepared; and

(iii) Cooperate substantively with the FAA Airports office in the preparation of an environmental impact statement, if necessary.

(3) The public agency shall withhold submission of an application to impose a PFC until such time as the FAA Airports office has—

(i) Concurred in a determination that the approval of such application is categorically excluded;

(ii) Approved a Federal finding of no significant impact with respect to such application; or

(iii) Approved a final environmental impact statement and a record of decision with respect to such application.

(b) Satisfy appropriate airspace analysis in order to determine the effect of the proposed project on the safe and efficient use of the national airspace system by—

(1) Consulting with the appropriate FAA Airports office to determine whether an airport airspace analysis or obstruction evaluation is required.

(2) If such an analysis is required, the public agency shall—

(i) Initiate a request for the appropriate airspace study of the proposed project; and

(ii) Obtain a completed airspace study determination of no objection from the FAA Airports office, or other FAA office if so directed.

(c) Ensure that the project to be financed with PFC revenue satisfies the requirement for an up-to-date ALP by—

(1) Consulting with the appropriate FAA Airports office to determine whether the latest approved ALP includes the project to be financed with PFC revenue or whether an ALP is not required.

(2) If the ALP has not been approved with respect to the proposed project, the public agency shall initiate a request for ALP review and approval at the appropriate FAA Airports office.

§ 158.25 Consultation with air carriers and foreign air carriers.

(a) Prior to submitting an application to the FAA, a public agency shall, to the extent practicable, provide written notice to air carriers and foreign air carriers currently operating at the airport, including—

(1) Descriptions of individual projects being considered for funding by PFC's;

(2) The date and location of a meeting to present such projects to air carriers

and foreign air carriers operating at the airport; and

(3) The PFC amount, proposed charge effective date, the proposed charge expiration date and estimated total PFC revenue.

(b) Not later than 30 days after the issuance of a written notice of such meeting, each air carrier and foreign air carrier notified and operating at the airport must provide a written acknowledgement of receipt of the notice. Failure of any such carrier to acknowledge receipt shall be deemed certification of agreement with the projects.

(c) Not sooner than 30 days nor later than 45 days after issuance of a written notice, the public agency must meet with air carriers and foreign air carriers to provide—

(1) A description of projects to be undertaken;

(2) An explanation of the need for the projects; and

(3) A detailed financial plan for the projects.

(d) Not later than 30 days after the date of such meeting each air carrier and foreign air carrier must provide the public agency with certification of agreement or disagreement with proposed projects. The failure of any such carrier to submit such certification shall be deemed certification of agreement with the projects. Any certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons shall void a certification of disagreement.

§ 158.27 Application.

(a) This section specifies the information necessary for the Administrator to determine whether a proposed project is eligible for the use of PFC revenue, whether the environmental impacts, if any, of the project have been disclosed, and whether the proposed project will not derogate the safety, efficiency or capacity of the airport or the national airspace system.

(b) A public agency shall submit to the appropriate FAA Airports office, FAA Form _____, Application for Approval of Passenger Facility Charge (PFC) (see Appendix A) and Assurances (see Appendix B). An original and two (2) copies of the application and supporting documentation shall be submitted.

(c) A public agency shall not submit an application more than 1 year in advance of the proposed charge effective date.

(d) Applications shall be timed to ensure project work will proceed no later than 2 years after the proposed charge effective date.

(e) A public agency may submit one application requesting approval to impose a PFC to finance one or more projects.

(f) No project work, except formulation costs including land acquisition, may commence until the application is approved.

(g) Unless otherwise authorized by the Administrator, the application must be accompanied by the following:

(1) An approved airport layout plan depicting the proposed project if located on the airport.

(2) A description and sketch of the proposed project.

(3) Justification for the project, including the extent to which the project achieves one or more of the objectives set forth in § 158.17(a). In its justification for any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions which limit competition between and among air carriers and foreign air carriers at the airport, any initiatives it proposes to foster opportunities for enhanced competition between and among such carriers, and the expected results of such initiatives.

(4) A certification that all requirements of § 158.23 have been satisfied.

(5) A copy of the FAA's final airspace determination with respect to the proposed project if an airspace study is required.

(6) A copy of the airport capital plan or other documentation of planned improvements for an airport-related project.

(7) A financial plan for the project, including—

(i) Estimated allowable project costs allocated to major project elements;

(ii) Projected passenger enplanements during the collection period;

(iii) PFC amount;

(iv) Anticipated PFC revenue to finance the project; and

(v) The source and amount of other funds needed to finance the project.

(8) Construction schedule or project staging plan.

(9) Summary of consultation with air carriers and foreign air carriers operating at the airport including—

(i) A listing of such carriers and those notified;

(ii) Acknowledgement of meeting notice (or lack thereof);

(iii) Certification of agreement or disagreement with projects (or lack thereof); and

(iv In the event of carrier disagreement with the project, the public agency's reasons for proceeding; and

(10) Public agency assurances set forth in Appendix B to this part.

(h) The Administrator may request additional documentation as needed.

§ 158.29 Review and approval process.

(a) *Determination of completeness.* Within 30 days after receipt of an application by the FAA Airports office, the Administrator will determine whether the application substantially complies with the requirements of § 158.27.

(b) *Process for substantially complete application.* If the Administrator determines the application is substantially complete, the following procedures shall apply:

(1) The Administrator will advise the public agency by letter that its application is substantially complete.

(2) The Administrator will publish a notice in the **Federal Register** advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (d) of this section. A copy of the notice will also be provided to the public agency.

(3) The public agency—

(i) Shall make available for inspection, upon request, a copy of the application, notice, and other documents germane to the application, and

(ii) May publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located.

(4) Following review of the application, public comments and any other information obtained under paragraph (f) of this section, the Administrator will issue a final decision approving or disapproving the application no later than 120 days after the application was received by the FAA Airports office.

(c) *Process for substantially incomplete applications.* If the Administrator determines an application is not substantially complete, the following procedures shall apply:

(1) The Administrator will advise the public agency by letter that its application is not substantially complete. That letter shall list the information required to complete the application.

(2) Within 15 days after the Administrator sends such a letter, the public agency shall advise the Administrator by letter whether it intends to supplement its application.

(3) If the public agency declines to supplement the application, the following procedures shall apply:

(i) The Administrator will publish a notice in the **Federal Register** advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (d) of this section. A copy of the notice will also be provided to the public agency.

(ii) The public agency—

(A) Shall make available for inspection, upon request, a copy of the application, notice, and other documents germane to the application, and

(B) May publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located.

(iii) Following review of the application, public comments and any other information obtained under paragraph (f) of this section, the Administrator will issue a final decision approving or disapproving the application no later than 120 days after the application was received by the FAA Airports office.

(4) If the public agency chooses to supplement its application, the original application shall be deemed to be withdrawn for purposes of applying the statutory deadline for the Administrator's decision and the following procedures shall apply when a supplement is received:

(i) The Administrator will determine whether the application as supplemented is substantially complete as set forth in paragraph (a) of this section.

(ii) If the application is substantially complete, the procedures set forth in paragraph (b) of this section shall be followed.

(iii) If the application is still not substantially complete, the Administrator will so advise the public agency as set forth in paragraph (c)(1) of this section, and provide the public agency with an opportunity to further supplement its application as set forth in paragraph (c)(2) of this section.

(iv) The Administrator, upon determining an application as supplemented is substantially complete or will not be further supplemented, will publish a notice in the **Federal Register** advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (d) of this section. A copy of the notice will also be provided to the public agency. The public agency may publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located, and shall make available for inspection upon request, a copy of the application, notice, and other documents germane to the application.

(v) Following review of the application and supplements, public comments and any other information obtained under paragraph (f) of this section, the Administrator will issue a final decision approving or disapproving the application no later than 120 days after the last supplement to the application filed under paragraph (c)(4) was received by the FAA Airports office.

(d) **The Federal Register notice.** The **Federal Register** notice required above shall include the following information.

(1) The name of the public agency and the airport at which the PFC is to be imposed;

(2) A brief description of the PFC project, the level of the proposed PFC, the proposed charge effective date, the proposed charge expiration date and the total estimated PFC revenue;

(3) The address and telephone number of the FAA Airports office at which the application may be inspected;

(4) The Administrator's decision on whether the application is substantially complete;

(5) If the application is not substantially complete, a list of the information that would be necessary for a substantially complete application; and

(6) The due dates for any public comments.

(e) *Public comments.* (1) Interested persons may file comments on the application within 30 days after publication of the Administrator's notice in the **Federal Register**.

(2) Three copies of these comments shall be submitted to the FAA Airports office identified in the **Federal Register** notice.

(3) Commenters shall also provide one copy of their comments to the public agency.

(4) Comments from air carriers and foreign air carriers may be in the same form as provided to the public agency under § 158.25.

(f) The Administrator may request such additional information as may be necessary to decide any application within the 120-day statutory time limit.

(g) *The Administrator's decision.* (1) An application will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will result in revenue that does not exceed amounts necessary to finance the project;

(ii) The project will achieve the objectives set forth in § 158.17(a);

(iii) The project is eligible as set forth in § 158.17(b); and

(iv) The application satisfies § 158.27.

(2) The Administrator will notify the public agency in writing of the decision on the application. The notification will list the projects for which PFC financing is approved, PFC amount, and total approved PFC revenue.

§ 158.31 Amendment of approved PFC.

(a) After approval of an application to impose a PFC, a public agency may request that the approved PFC be amended.

(b) A public agency may request an amendment to decrease the total approved PFC revenue without submitting specific justification or further air carrier or foreign air carrier consultation. The request shall be in writing and shall specify the amount of decrease proposed and the means by which the reduction is to be achieved. The public agency will also assure that there is to be no appreciable change in the nature or scope of the PFC project.

(c) The following amendments may be requested, without further air carrier or foreign air carrier consultation, by letter outlining the reasons for the change when they would result in an increase of 15 percent or less of total approved PFC revenue:

(1) A change in the approved PFC [not to exceed $3.00 per passenger]; and

(2) A change in work scope which, in the opinion of the Administrator, is incidental to the project.

(d) A public agency must show evidence of air carrier and foreign air carrier consultation and provide such information as may be requested by the Administrator for the following requested amendments:

(1) A change requiring an increase of more than 15 percent in total approved PFC revenue;

(2) A change in the project work scope which, in the opinion of the Administrator; is not incidental to the project; or

(3) Any change which, in the opinion of the administrator, would substantially alter the character of the approved application.

(e) Approval of amendment.

(1) The Administrator may approve or disapprove the amendments under paragraphs (b) and (c) of this section without public notice or opportunity for comment as specified in § 158.29 (d) and (e).

(2) The Administrator will provide public notice and opportunity for comment pursuant to § 158.29 (d) and (e) before approving or disapproving amendments under paragraph (d) of this section.

§ 158.33 Duration of authority to impose a PFC.

A public agency that has been granted the authority to impose a PFC is authorized to impose such PFC until—

(a) It has received the total approved PFC revenue;

(b) The authority to collect the PFC is terminated by the Administrator under subpart E of this part; or

(c) The public agency is determined by the Administrator to be in violation of section 9304(e) of the Airport Noise and Capacity Act of 1990 (Pub. L. 101–508, title IX, subtitle D), and the authority to collect the PFC is terminated under subpart E of this part.

§ 158.35 Use of excess PFC revenue.

(a) Public agencies shall promptly notify all operating and all other issuing carriers to stop collection when total PFC revenue received equals the amount approved.

(b) If excess PFC revenue is collected, such funds shall be reserved for use on future eligible projects following consultation with the Administrator.

SUBPART C—COLLECTION, HANDLING, AND REMITTANCE OF PFC's

§ 158.41 General.

This subpart contains the requirements for notification, collection, handling and remittance of PFC's.

§ 158.43 Public agency notification to air carriers and foreign air carriers.

(a) Each public agency that receives approval from the Administrator to impose a PFC shall notify the air carriers and foreign air carriers operating at its airport of the requirement to collect the PFC from passengers enplaned by such carrier at the airport. Each such carrier is responsible for notification of the collection requirement to its agents including other issuing carriers.

(b) The notification shall be in writing and contain as a minimum the following information:

(1) The amount of the PFC.

(2) The charge effective date.

(3) The charge expiration date.

(4) A copy of the Administrator's notice of approval.

(c) The charge effective date shall be no earlier than 30 days after the notification.

(d) The public agency shall provide a copy of the notification to the appropriate FAA Airports office.

§ 158.45 Collection of PFC's.

(a) Upon receipt of notification from the public agency, issuing carriers and their agents shall collect the required PFC on all air travel tickets sold on or after the charge effective date for all passengers enplaned at the airport except as provided in paragraphs (c), (d), and (e) of this section. Issuing carriers shall be responsible for all funds from time of collection to disbursement.

(1) Issuing carriers and their agents shall not issue air travel tickets for enplanements from airports imposing PFC's unless the appropriate charge is collected. The appropriate charge is the PFC in effect at the time the ticket is purchased.

(2) Issuing carriers and their agents shall collect the PFC's based upon the itinerary at the time of purchase. Any voluntary changes in itinerary are subject to collection or refund of the PFC as appropriate.

(b) Issuing carriers and their agents shall note as a separate item on each air travel ticket upon which a PFC is shown, the total amount of PFC's paid by the passenger and an itemization of the PFC's imposed by each public agency.

(c) For each one-way trip on a complete air travel ticket, issuing air carriers and their agents shall collect a PFC from a passenger only for the first two airports where PFC's are imposed.

(d) Issuing carriers and their agents shall not collect PFC's from a passenger on a flight for which essential air service compensation is being paid to an eligible point under Section 419 of the Federal Aviation Act.

(e) Issuing carriers and their agents shall not collect or refund PFC's from a passenger for an involuntary change in itinerary. Collected PFC's shall be distributed as noted on the air travel ticket.

(f) Unless amended by subsequent notification by the public agency or the Administrator, issuing carriers and their agents shall stop collecting the PFC on the charge expiration date.

(g) Issuing carriers and their agents shall not collect PFC's from a passenger whose air travel ticket was issued prior to notification from the airport of the charge effective date, even for travel after the charge effective date.

§ 158.47 Handling of PFC's.

(a) Issuing carriers shall establish and maintain a financial management system to account for such PFC's in accordance with Generally Accepted Accounting Principles.

(b) Passenger facility charge revenue must be accounted for separately by issuing carriers.

§ 158.49 Remittance of PFC's.

Passenger facility charges collected by issuing carriers and their agents shall be remitted to the public agency according to the following schedule:

(a) PFC revenue collected from the first day of any month through the fifteenth day of the month shall be remitted to the public agency no later than the fifteenth day of the calendar month (or if that date falls on a weekend or holiday, the first business day thereafter) immediately following the month of collection.

(b) PFC revenue collected from the sixteenth day of the month through the last day of the month shall be remitted to the public agency no later than the last day of the calendar month (or if that date falls on a weekend or holiday, the first business day thereafter) immediately following the month of collection.

§ 158.51 Collection compensation.

As compensation for collecting, handling, and remitting the PFC revenue, the issuing air carrier shall be entitled to retain any interest it may earn on this revenue from the time of collection to the time of disbursement.

SUBPART D—REPORTING, RECORDKEEPING AND AUDITS

§ 158.61 General.

This subpart contains the requirements for reporting, recordkeeping and auditing of accounts maintained by issuing carriers and their agents and by public agencies.

§ 158.63 Reporting requirements: public agency.

(a) The public agency shall provide the appropriate FAA Airports office with written notice of the following:

(1) The date work on the project actually begins, within 30 days of such date;

(2) Any substantial deviation from the estimated project schedule or costs and the public agency's proposed corrective action;

(3) 60-day advance notice of physical project completion.

(4) Receipt of 90 percent of total approved PFC revenue, including interest accrued on any revenue held on deposit.

(b) The notices required under paragraph (a) of this section may be submitted in conjunction with a request for amendment of an approved PFC under § 158.31.

§ 158.65 Reporting requirement: issuing carrier.

Each issuing carrier collecting PFC's for a public agency shall file quarterly reports to the public agency unless otherwise agreed by the issuing carrier

and public agency, providing an accounting of funds collected and funds disbursed.

(a) Unless otherwise agreed by the issuing carrier and public agency, reports shall identify, by airport and by air carrier and foreign air carrier operating at the airport, the total passengers enplaned, the passengers enplaned exempt from collection under §§ 158.9, 158.11, 158.13, and the number who were exempt due to purchase of tickets before the charge effective date. The report shall also identify any PFC's collected and disbursed but subsequently refunded to passengers due to voluntary changes in itinerary.

(b) The report shall be filed on or before the last day of the calendar month following the calendar quarter or other period agreed by the issuing carrier and public agency for which funds were collected.

§ 158.67 Recordkeeping and auditing: public agency.

(a) Each public agency shall keep on deposit in an interest bearing account any unliquidated PFC revenue remitted to it by air carriers and foreign air carriers. Interest earned on such revenue shall be used, in addition to the principal on deposit, to pay the allowable costs of PFC-funded projects.

(b) Each public agency shall establish and maintain for each approved application a separate accounting record in accordance with Generally Accepted Accounting principles. The accounting record shall identify the PFC revenue received from the issuing carriers and their agents and the amounts expended upon each project.

(c) During the period the PFC is collected each public agency shall provide for an independent audit at least annually of each project contained in the approved application. A copy of the audit shall be provided upon request to each issuing carrier that disbursed PFC revenue to the public agency in the period covered by the audit and to the Administrator.

§ 158.69 Recordkeeping and auditing: issuing carriers.

(a) Issuing carriers and their agents shall establish and maintain for each public agency for which it collects a PFC an accounting record of PFC revenue collected, disbursed, and refunded in accordance with Generally Accepted Accounting Principles. The accounting record shall identify the airport and air carrier or foreign air carrier on which the passengers were enplaned at the airport.

(b) Issuing carriers and their agents shall provide for an independent audit of the PFC account annually. A copy of the audit shall be provided upon request to each public agency for which a PFC is collected, and to the Administrator.

§ 158.71 Federal recordkeeping and auditing oversight.

(a) The Administrator may periodically audit and/or review the use of PFC revenue by a public agency. The purpose of the audit or review is to ensure the public agency is in compliance with the requirements of this regulation and section 1113(e) of the Federal Aviation Act.

(b) The Administrator may periodically audit and/or review the collection and disbursement by the issuing carriers and their agents of PFC revenue. The purpose of the audit or review is to ensure issuing carriers and their agents are in compliance with the requirements of this regulation and section 1113(e) of the Federal Aviation Act.

(c) Public agencies and issuing carriers shall allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the United States, access to any of its books, documents, papers, and records pertinent to PFC's.

SUBPART E—TERMINATION FOR CAUSE

§ 158.81 General.

This subpart contains the procedures for termination of PFC's for cause and loss of Federal airport grant funds.

§ 158.83 Termination of authority to impose PFC's.

(a) The Administrator may enter into informal resolution with the public agency or any other affected party if, after review under § 158.71, there are concerns that PFC revenue is not being used in accordance with this regulation or with section 1113(e) of the Federal Aviation Act.

(b) *Termination of authority.* If informal resolution is not successful, the Administrator will begin proceedings to terminate the public agency's authority to impose a PFC.

(1) The Administrator will publish a notice of proposed termination in the **Federal Register** and supply a copy to the public agency. This notice shall list the scope of the proposed termination, the basis for the proposed action and date for filing written comments or objections by all interested parties and requests for hearing by the public agency. This notice shall also identify the corrective actions the public agency can take to avoid further proceedings. The due date for comments and corrective action shall be 30 days after publication of the notice.

(2) If requested by the public agency, a public hearing will be held prior to the Administrator's final decision.

(3) The Administrator will publish a notice in the **Federal Register** advising of the final decision to terminate in whole or in part the authority to impose a PFC or to continue the authority. A copy of the notice will also be provided to the public agency. The authority shall only be terminated upon the Administrator's decision that the PFC revenue is not being used in accordance with this regulation or section 1113(e) of the Federal Aviation Act.

(4) Within 10 days of the notice of the Administrator's decision, the public agency shall provide the FAA airports office with a listing of the air carriers and foreign air carriers operating at the airport and all other issuing carriers that have remitted PFC revenue to the public agency in the preceding 12 months.

(5) The FAA will provide a copy of the **Federal Register** notice to each of the air carriers and foreign air carriers identified in (4). Such carriers are responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA.

§ 158.85 Loss of federal airport grant funds.

(a) If the Administrator determines, in accordance with § 158.83, or after review under § 158.71 that revenue derived from a PFC is excessive or is not being used as approved, the Administrator may reduce the amount of funds otherwise payable to the public agency under section 507 of the AAIA of 1982.

(b) The amount of the reduction under paragraph (a) of this section shall equal the excess collected, or the amount not used in accordance with this regulation.

(c) A reduction under paragraph (a) of this section shall not constitute a withholding of approval of a grant application or the payment of funds under an approved grant within the meaning of 49 U.S.C. app. 2218.

Subpart F—Reduction in Airport Improvement Program Apportionments

§ 158.91 General.

This subpart describes the reduction in funds apportioned to a large or medium hub airport that imposes a PFC.

§ 158.93 Public agencies subject to reduction.

The funds apportioned under section 507(a)(1) of the Airport and Airway

Improvement Act of 1982 to a public agency for a specific primary commercial service airport that it controls will be reduced if—

(a) Such airport enplanes 0.25 percent or more of the total annual enplanements in the United States, and

(b) The public agency imposes a PFC at such airport.

§ 158.95 Implementation to reduction.

(a) A reduction in apportioned funds will be applied beginning in the fiscal year immediately following the Administrator's approval and will be applied in each succeeding fiscal year in which the public agency imposes a PFC.

(b) A reduction in apportioned funds in a fiscal year shall be an amount equal to 50 percent of the PFC revenue forecast for the fiscal year, except that the maximum reduction in a fiscal year shall not exceed 50 percent of the funds that would otherwise be apportioned to the public agency based on passengers enplaning at the airport.

(c) The reduction in apportioned funds will be calculated at the beginning of each fiscal year based on the projected PFC revenue for such year.

(d) If the projection of PFC revenue in a fiscal year is inaccurate, the reduction in apportioned funds may be increased or decreased in the following fiscal year, except that any further reduction shall not cause the total reduction to exceed 50 percent of such apportioned amount as would otherwise be apportioned in any fiscal year.

Appendix A to Part 158—Application Form

APPLICATION FOR APPROVAL OF PASSENGER FACILITY CHARGE (PFC)
Date submitted: _____
Date received: _____
Agency use: _____
New _____
Amendment _____
1. Legal name and address of public agency
2. Name and phone no. of person to contact
3. Amount of PFC $1.00 $2.00 $3.00
4. Proposed collection period
   Charge effective date _____
   Charge expiration date _____
5. Brief work description or change in project scope:
6. Estimated funding
   a. Project costs
   b. Anticipated revenue
   PFC's
   Federal
   State
   Local
   Other
   Total
7. To the best of my knowledge and belief, all data in this application is true and correct. The document has been duly authorized by the governing body of the public agency and the public agency will comply with the attached assurances if the application is approved.

Typed name of Authorized Representative
Title
Tle. No.

Signature of Authorized Representative
Date signed

Appendix B to Part 158—Assurances

A. *General.*

1. These assurances shall be complied with in the conduct of a project funded with a passenger facility charge (PFC).

2. These assurances are required to be submitted as part of the application for approval of authority to impose a PFC under the provisions of the Aviation Safety and Capacity Expansion Act of 1990.

3. Upon approval by the administrator of an application, the public agency is responsible for compliance with these assurances.

B. *Public agency certification.* The public agency hereby assures and certifies, with respect to this approval that:

1. It will comply with all provisions of 14 CFR part 158.

2. *Responsibility and authority of the public agency.* It has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the public agency's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application and to provide such additional information as may be required.

3. It has complied with all applicable local laws and regulations.

4. *Fund availability.* It has sufficient funds that that portion of the project costs not to be paid by PFC revenue. It has sufficient funds available to assure operation and maintenance of items funded in whole or in part by PFC revenue.

5. *Environmental requirements.* It will comply with the regulations of the Council on Environmental Quality, promulgated pursuant to the National Environmental Policy Act of 1969.

6. *Safety and security prerequisites.* Prior to imposing a PFC, all safety and security equipment required by regulation will be provided for at all airports under its control. If such equipment has not yet been installed, it will demonstrate to the satisfaction of the Administrator a plan and schedule for providing same, that may include the use of PFC revenue to satisfy the requirement.

7. *Nonexclusivity of contractual agreements.* It will not enter into an exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public agency from funding, developing, or assigning new capacity at the airport with PFC revenue.

8. *Competitive access.* It will not enter into any lease or use agreement with any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a passenger facility charge unless such agreement for such facility—

a. Contains no carryover provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities; and

b. Contains a provision, applicable to any air carrier or foreign air carrier having an exclusive lease or use agreement for existing facilities at such airport, which operates to prevent such carrier from leasing PFC-financed facilities if any portion of its existing exclusive-use facilities is either not fully utilized or not made available for use by potentially competing air carriers or foreign air carriers.

9. *Rates, fees, and charges.* a. It will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier and foreign air carrier.

b. It will not include in its rate base by means of depreciation, amortization, or any other method that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier or foreign air carrier.

c. With respect to a project for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers and foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid air carriers and foreign air carriers using similar facilities at the airport that were not financed by PFC revenue.

10. *Policies, standards, and specifications.* It will carry out the project in accordance with FAA airport design, construction and equipment standards and specifications contained in advisory circulars current on the date of application submission.

11. *Recordkeeping and audit.* It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project or as long as PFC revenue is collected to finance the project, whichever is longer. All records will satisfy the requirements of 14 CFR part 158 and will contain documentary evidence for all items of project costs.

12. *Reports.* It will submit reports in accordance with the requirements of 14 CFR part 158, subpart D, and as the Administrator may reasonably request.

Issued in Washington, DC on January 31, 1991.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 91-2670 filed 1-31-91; 3:02 pm]

BILLING CODE 4910-13-M

14 CFR Part 158

[Docket No. 26385]

RIN 2120-AD87

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting to provide an opportunity for public comment on proposed new regulations to implement a passenger facility charge program. The proposed regulations are intended to implement the Aviation Safety and Capacity Expansion Act of 1990 which requires the Department of Transportation to issue regulations within 180 days under which a public agency may be authorized to impose an airport passenger facility charge (PFC) at a commercial service airport it controls. The proceeds from such PFC's are to be used to finance eligible airport-related projects that preserve or enhance capacity, safety or security of the national air transportation system, reduce noise from an airport which is part of such system, or furnish opportunities for enhanced competition between or among air carriers. The proposed rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection and remittance of PFC's by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC. In addition to this public meeting, the FAA is soliciting written comments on the notice of proposed rulemaking published concurrently with this notice. The written and oral comments received at this meeting, together with written comments submitted in response to the notice of proposed rulemaking, will assist the FAA in its consideration of issuing a final rule.

DATES: The public meeting will be held on February 15, 1991, from 9 a.m. to 4 p.m. Registration will begin at 8 a.m. Due to security requirements, early arrival is encouraged. Requests to make a presentation should be made by February 12, 1991.

ADDRESSES: The public meeting will be held in the FAA Auditorium, Federal Aviation Administration, 800 Independence Avenue, SW., 3rd Floor, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions about the logistics of the meeting should be directed to Ida Klepper, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9688.

Questions concerning the subject matter of the meeting should be directed to Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Interested persons are invited to attend the meeting and to participate by making oral or written statements. Each person who wishes to present a statement at the meeting should direct the request to the first person listed in the section entitled **"FOR FURTHER INFORMATION CONTACT."** Requests must be received on or before February 12, 1991. Late requests to present a statement will be honored if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. To the extent practicable, speakers are encouraged to submit a copy of any written material to be presented orally during the meeting, prior to the meeting. Written statements should be submitted in triplicate and will be made a part of the docket. Presentations will be scheduled on a first-come first-serve basis. In order to accommodate as many speakers as possible, we suggest commenters present summaries of their written material. The amount of time allocated to each speaker may be less than the amount of time requested.

Meeting Procedures

The following procedures are established by the FAA to facilitate the meeting:

1. There will be no admission fee or other charge to attend and to participate in the meeting. The meeting will be open to all persons who register on the day of the meeting subject to availability of space in the meeting room. If practicable, the meeting may be accelerated to enable adjournment in less time than currently is scheduled.

2. Representatives of the FAA will preside over the meeting. A panel of DOT/FAA personnel involved in the rulemaking process will be present at the meeting.

3. The meeting will be recorded by a court reporter. A transcript of the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

4. The FAA will review and consider all material presented by a participant at the meeting. All comments, position papers, and material presenting views or arguments related to the discussion topics will be accepted and entered into the public docket.

5. Statements may be made by members of the meeting panel to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the meeting panel is not intended to be, and should not be construed as, a position of the FAA on the final rulemaking.

6. The meeting is designed to solicit public views and information on passenger facility charges. Therefore, the meeting will be conducted in an informal and nonadversarial manner. An individual will not be subject to cross-examination by any other participant; however, any member of the meeting panel is entitled to ask questions in order to clarify a statement made at the meeting or a statement contained in material submitted by a meeting participant.

Issued in Washington, DC on January 31, 1991.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 91-2673 Filed 1-31-91; 3:02 pm]

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federal register

Tuesday
February 5, 1991

Part III

The President

Proclamation 6243—For a National Day of Prayer, February 3, 1991

Federal Register
Vol. 56, No. 24
Tuesday, February 5, 1991

Presidential Documents

Title 3—

The President

Proclamation 6243 of February 1, 1991

For a National Day of Prayer, February 3, 1991

By the President of the United States of America

A Proclamation

As one Nation under God, we Americans are deeply mindful of both our dependence on the Almighty and our obligations as a people He has richly blessed. From our very beginnings as a Nation, we have relied upon God's strength and guidance in war and peace. Entrusted with the holy gift of freedom and allowed to prosper in its great light, we have a responsibility to serve as a beacon to the world—to use our strength and resources to help those suffering in the darkness of tyranny and repression.

Today the United States is engaged in a great struggle to uphold the principles of national sovereignty and international order and to defend the lives and liberty of innocent people. It is an armed struggle we made every possible effort to avoid through extraordinary diplomatic efforts to resolve the matter peacefully, yet—given no choice by a ruthless dictator who would wield political and economic hegemony over other nations through force and terror—it is a struggle we wage with conviction and resolve. Our cause is moral and just.

However confident of our purpose, however determined to prevail, we Americans continue to yearn for peace and for the safety of our service men and women in the Persian Gulf. With these great hopes in mind, I ask all Americans to unite in humble and contrite prayer to Almighty God. May it please our Heavenly Father to look upon this Nation, judging not our worthiness but our need, and to grant us His continued strength and guidance. May He watch over and support the courageous members of our Armed Forces, their loving families, as well as the forces of those nations that have joined the coalition to liberate Kuwait and to deter further Iraqi aggression.

Today, as we turn our hearts toward Heaven, let us also pray especially for those brave and selfless military personnel who have earned their final rest in the arms of God. Let us ask Him to strengthen and console their families, and let us also remember all those innocent civilians, wherever they may be, who have been affected by this conflict.

"All this being done, in sincerity and truth," as President Lincoln once wrote, "Let us then rest humbly in the hope authorized by the Divine teachings, that the united cry of the Nation will be heard on high, and answered . . ." by Almighty God, our refuge and strength, our rock and our salvation.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 3, 1991, as a National Day of Prayer. I ask that Americans gather in homes and places of worship to pray for the members of Operation Desert Storm; for their families; and for all those innocent persons, wherever they may be, who suffer as a result of the conflict in the Persian Gulf. I ask that prayer be made for American military commanders in the region and for the forces of other nations that have joined in the coalition to liberate Kuwait. I also urge the American people and their elected representatives to give thanks to God for His mercy and goodness and humbly to ask for His continued help and guidance in all our endeavors. Let us

pray this day, and every day hereafter, for peace. And may God keep this country as one great Nation under Him forever.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of February, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-2901
Filed 2-4-91; 10:42 am]
Billing code 3195-01-M

Editorial note: For the President's radio address of Feb. 2, on the National Day of Prayer, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 6).

federal register

Tuesday
February 5, 1991

Part IV

Office of Management and Budget

Preview Sequestration Report for Fiscal Year 1992 to the President and Congress; Notice of Transmittal

OFFICE OF MANAGEMENT AND BUDGET

Notice of Transmittal of Preview Sequestration Report for Fiscal Year 1992 to the President and Congress

February 4, 1991.

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Preview Sequestration Report for Fiscal Year 1992 to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 91-2936 Filed 2-4-91; 12:08 pm]

BILLING CODE 3110-01-M

Reader Aids

Federal Register

Vol. 56, No. 24

Tuesday, February 5, 1991

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

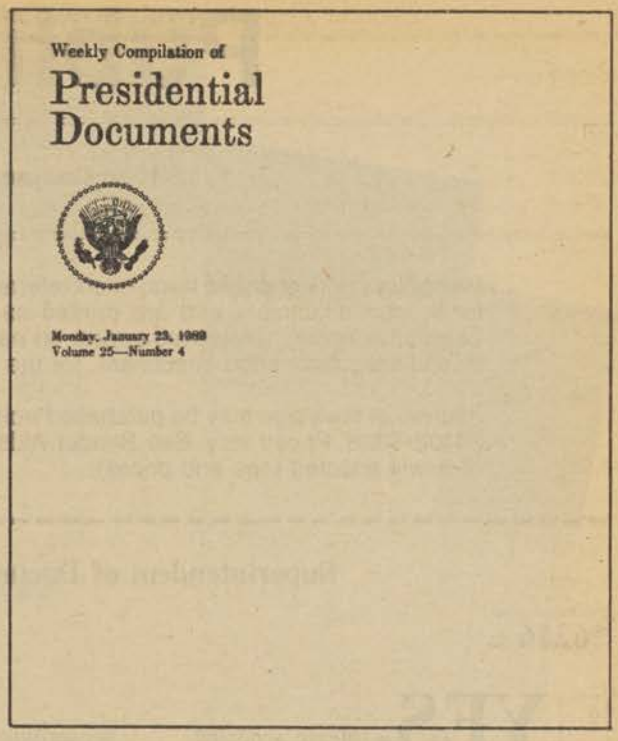
H.R. 4/Pub. L. 102–2

To extend the time for performing certain acts under the internal revenue laws for individuals performing services as part of the Desert Shield Operation. (Jan. 30, 1991; 105 Stat. 5; 2 pages) Price:$1.00

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102d Congress, 1st Session, 1991

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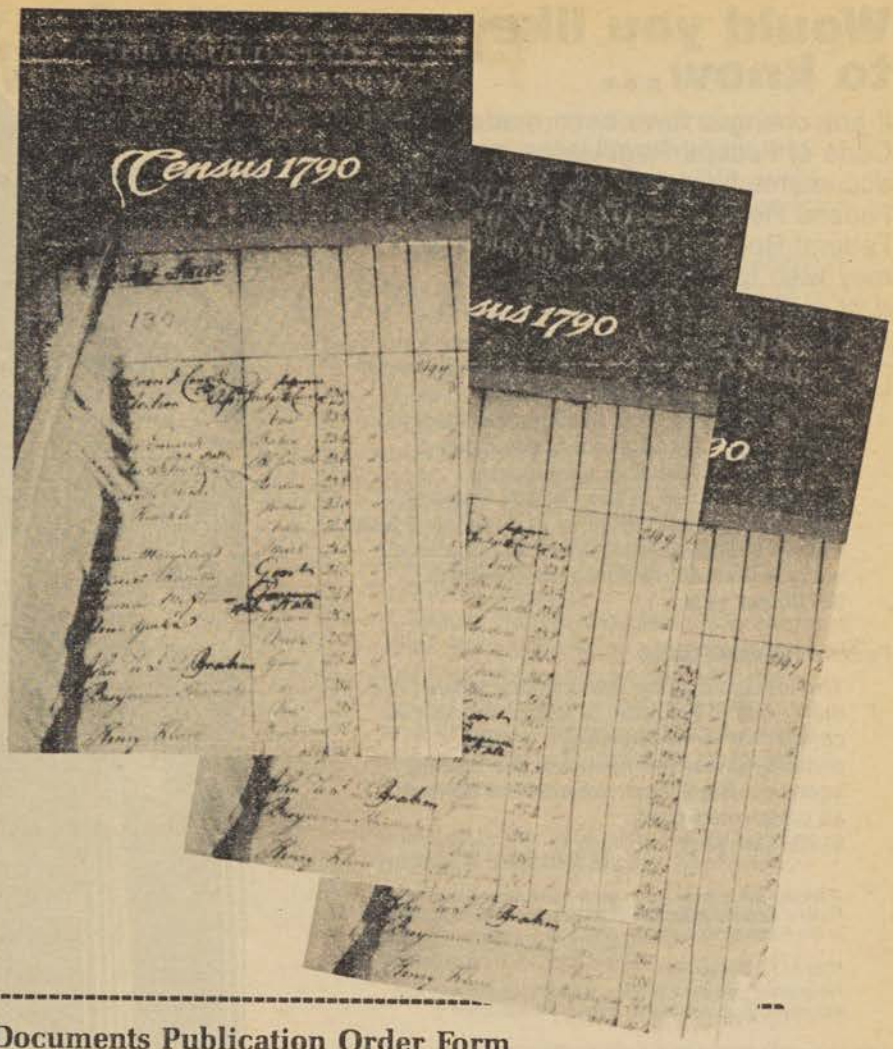
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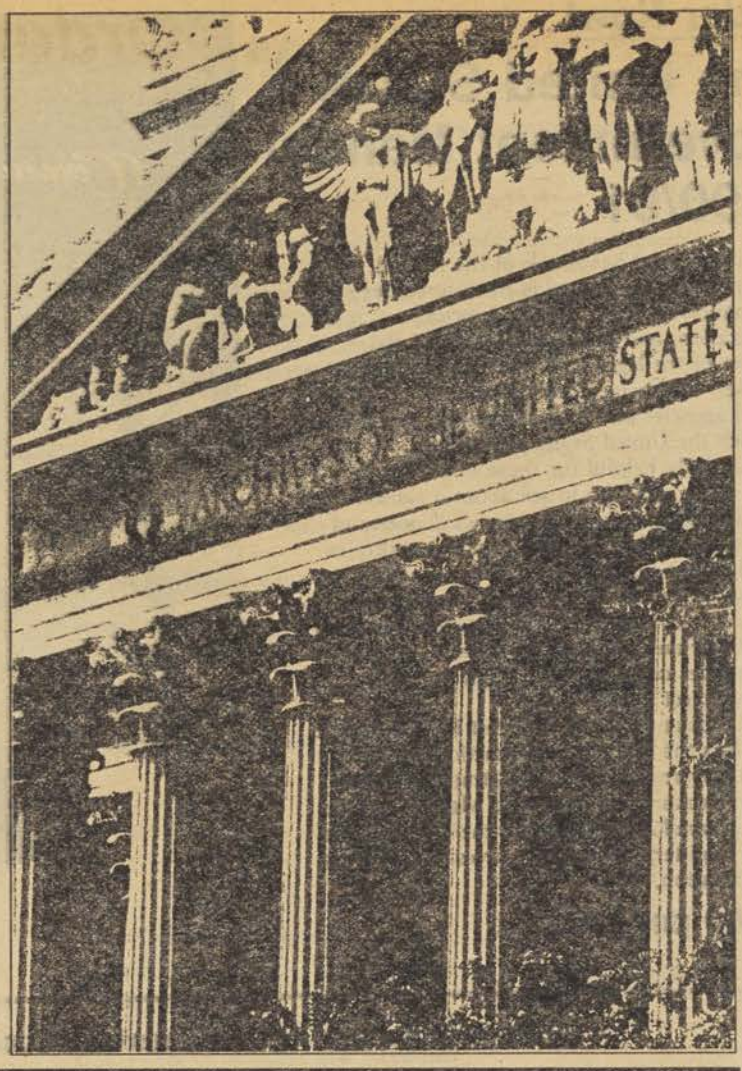
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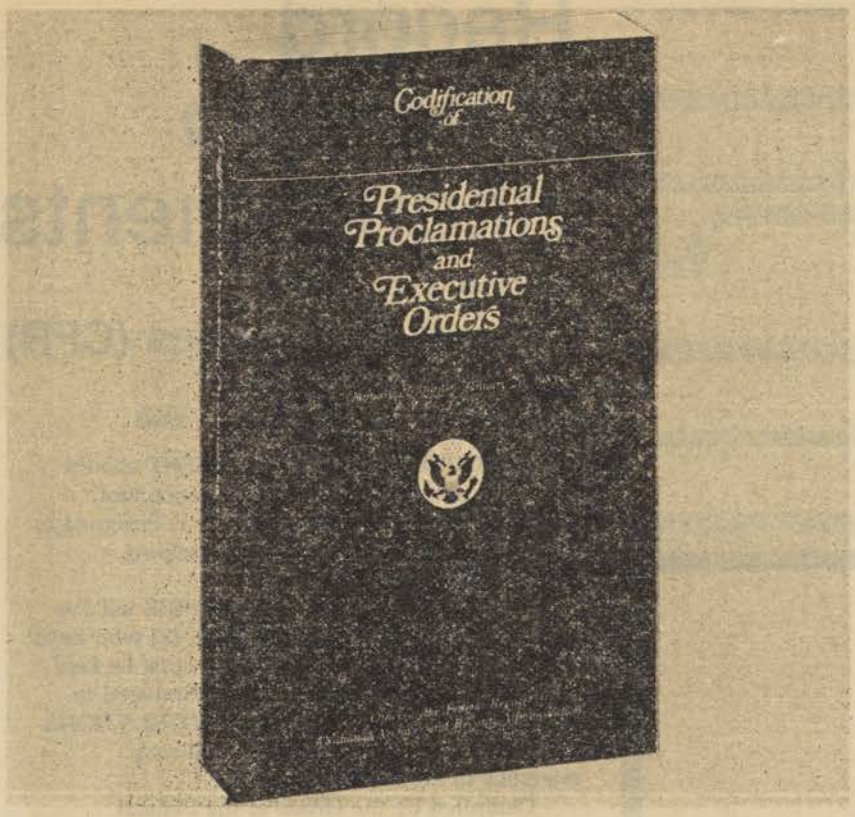
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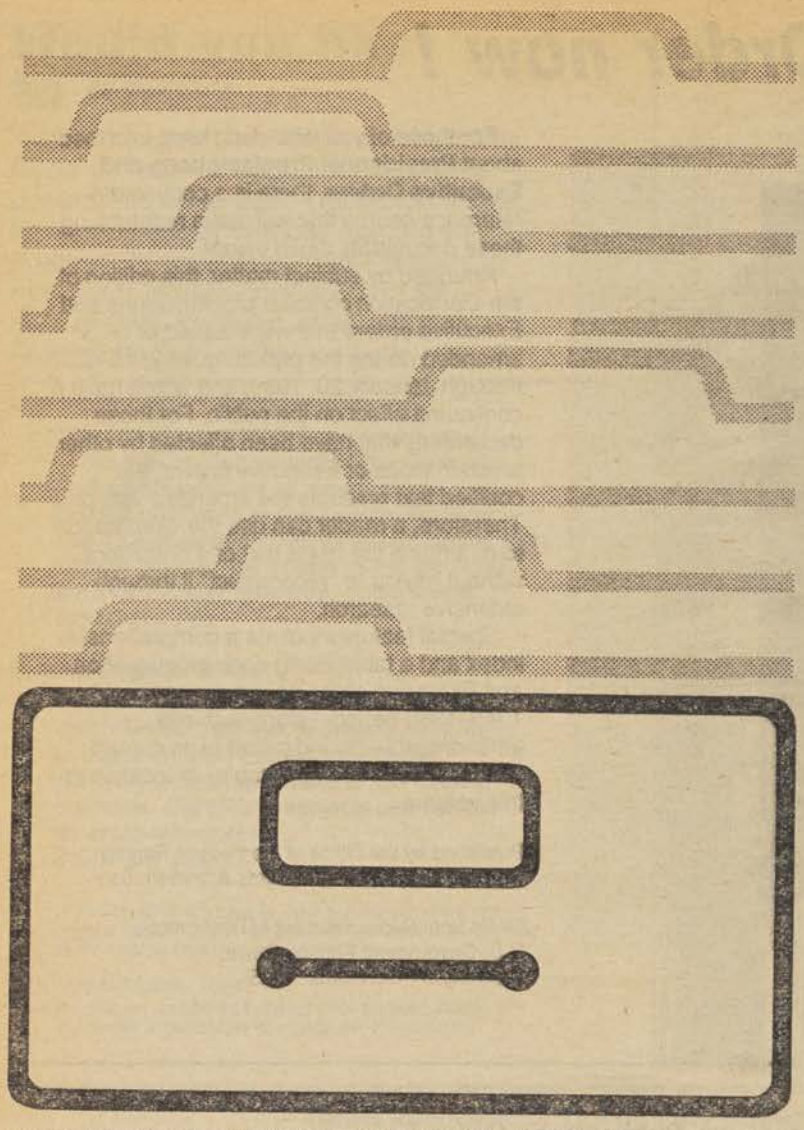
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